

1st of September 2022

Re: Freedom of Information Request 202211- Request Part-Grant.

Dear

I refer to your request, originally dated and received on 25th of July 2022 with the deadline extended by this office on the 12th of August 2022, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

1. *Correspondence between the Chief Executive and cabinet ministers (to include Taoiseach and Tánaiste) or SecGens of govt departments*
2. *Correspondence between the chairman and cabinet ministers (to include Taoiseach and Tánaiste) or SecGens of govt departments*

During 2021 and 2022

I wish to inform you that I have decided to part-grant your request on the 1st of September 2022.

The purpose of this letter is to explain that decision. This explanation has the following parts:

- A schedule of all of the records covered by your request (Appendix 1).
- an explanation of the relevant findings concerning the records to which access is denied, and
- a statement of how you can appeal this decision should you wish to do so.

Appendix 2 outlines the text of the sections of the Act relevant to this decision. Some exemptions under the FOI Act have been applied to the records identified in response to your FOI request.

I will address each of your two requests individually.

1. Findings, particulars and reasons for decisions to deny access.

Part 1

Details of your request were provided to the relevant sections within the LDA to identify records held which were within the scope of your request.

In respect to part one of your request where you request *Correspondence between the Chief Executive and cabinet ministers (to include Taoiseach and Tánaiste) or SecGens of govt departments. During 2021 and 2022 I am part-grating your request. For your information, the records schedule relating to this part of the request are provided in **Appendix 1.***

I wish to inform you that I am refusing a number of records in accordance with section 28 (1), section 36 (1) and section 37 (1) of the FOI Act 2014. These records are included in the Schedule of Records in **Appendix 1.**

The records requested are attached to this decision letter for your information.

Part 2

In respect of part two of your request where you request *Correspondence between the chairman and cabinet ministers (to include Taoiseach and Tánaiste) or SecGens of govt departments During 2021 and 2022 I wish to inform you that I am refusing your request in accordance with section 15(1) (a) of FOI 2014 Act.*

Refusal on administrative grounds to grant FOI requests

15(1) A head to whom an FOI request is made may refuse to grant the request where

(a)The record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

Details of your request were provided to the relevant sections within the LDA to identify records held which were within the scope of your request. In this regard, I am to advise you that no records have been identified as sought by you for either the current or former Chairperson of the LDA Board.

Harm Test and Public Interest Test

There is Harm test and Public Interest Test associated with sections 36 and 37 of the FOI Act whereby my decision must be made having fully considered the public interest relevant to this request.

The Harm test has been considered and it is believed that the release of these documents will have a likely prejudice on reasonable expectation that information provided to and held by the LDA can be maintained in a confidential manner, which outweighs the public interest that would be served were the records released to you.

I have considered the public interest issues which arise in your request and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of organisational functions to the greatest possible extent.
- The public interest in members of the public exercising their rights under the FOI Act.

- That there is more than just a transitory interest by the public in this information being released.
- The right to privacy is outweighed by the needs of the public.

In considering the public interest factors which favour withholding the records, I have taken account of the following:

- The best course of action which is in the public interest with regard to these records.
- That the LDA can conduct its business with external stakeholders in a confidential manner.
- Allowing a public body to hold personal information without undue access by members of the public.
- The public interest is not best served by releasing of these records.
- Protecting the flow of information to public bodies.
- Ensuring public bodies can carry out their duties without intrusion by the public.

Having reviewed the records for your request, I find there is no exceptional circumstance in this particular case that would warrant release of these particular records and therefore my decision is to find that the public interest is best served by refusal.

Access to Part of Records- Section 18

I believe that if the records refused were to be released in their current format, the substantial redactions under Section 28, 36 and 37 of the FOI Act would mean the records will be subject to Section 18. They will be released out of context and in a misleading fashion. I refer to the decision of Mr Peter Tyndall, Information Commissioner (case number I 60 I 99) in which he states:

Finally, section 18 of the FOI Act provides that if it is practicable, records may be granted in part, by excluding the exempt material. Section 18 shall not apply if the copy of the record provided would be misleading. I take the view that neither the definition of a record under section 2 nor the provisions of section 18 envisage or require the extracting of particular sentences or occasional paragraphs from records for the purpose of granting access to those particular sentences or paragraphs. Generally speaking, therefore, I am not in favour of the cutting or "dissecting" of records to such an extent.

The records could be misleading when Section 28, 36 and 37 have been applied and should therefore be withheld.

2. Right of Appeal

In the event that you are unhappy with this decision you may appeal this it. If you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Land Development Agency, 2nd Floor, Ashford House, Tara Street, Dublin 2 or by e-mail to foi@lda.ie.

Please note that a fee applies. This fee has been set at €30 (€10 for a Medical Card holder). Payment should be made by way of bank draft, money order, postal order or personal cheque, and made payable to Head of Finance, Land Development Agency, 2nd Floor, Ashford House, Tara Street, Dublin 2.

Payment can be made by electronic means, using the following details:

Land Development Agency
IE59AIBK93101257645196
BIC: AIBKIE2D

You must ensure that your FOI reference number (**FOI 202211**) is included in the payment details.

You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. 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 body.

Please be advised that the Land Development Agency replies under Freedom of Information may be released into the public domain via our website at lda.ie.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

Should you have any questions or concerns regarding the above, please contact me by email at foi@lda.ie.



Monika Szyszko
Compliance Manager

Appendix 1: Schedule of Records

Requester name:		Request Re:202211				
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision	
5 pages	Email thread 25/05/22 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
3 pages	Email thread 20/05/22 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
2 pages	Email 19/05/22 from Ken Spratt to John Coleman	withheld	Section 28 Section 36	Meeting of Government Commercially Sensitive	Refuse	
3 pages	Email thread 06/05/22 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Email 15/03/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
5 pages	Attachment 1 Email 15/03/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
7 pages	Attachment 2 Email 15/03/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Email 14/03/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
5 pages	Attachment Email 14/03/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Email 16/02/22 from John Coleman to John Shaw	withheld	Section 36	Commercially Sensitive	Refuse	
3 pages	Attachment Email 16/02/22 from John Coleman to John Shaw	withheld	Section 36	Commercially Sensitive	Refuse	
5 pages	Email thread 10/01/22 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
5 pages	Second Email thread 10/01/22 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Email 16/12/2021 from Niamh Redmond to John Coleman	withheld	Section 37	Personal Information	Refuse	
1 page	Attachment Email 16/12/2021 from Niamh Redmond to John Coleman	withheld	Section 37	Personal Information	Refuse	
4 pages	Email thread 07/12/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
3 pages	Email thread 06/12/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
3 pages	Email thread 15/11/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Email 03/11/2021 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	
1 page	Second Email 03/11/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse	



3 pages	Attachment to second Email 03/11/2022 from John Coleman to Graham Doyle	withheld	Section 36	Commercially Sensitive	Refuse
3 pages	Email thread 13/09/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse
1 page	Email 10/09/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse
30 pages	Attachment to Email 10/09/21 from Ken Spratt to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse
2 pages	Email thread 11/02/21 Niamh Redmond to John Coleman	withheld	Section 36	Commercially Sensitive	Refuse
1	Email 22/01/21 Niamh Redmond to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
2	Email 22/01/21 Niamh Redmond to John Coleman attachment Signed Ministerial order	NA	NA	NA	Grant
3	Email 22/01/21 Niamh Redmond to John Coleman attachment Signed Board Reappointment letter	Partial email address	Section 37	Personal Information	Part-grant
6	Email 02/02/21 John Coleman to Graham Doyle and Maria Graham	Email addresses phone numbers	Section 37	Personal Information	Part-grant
6-7	Email 02/02/21 John Coleman to Graham Doyle and Maria Graham	Partial text of forwarded email from Minister E. Ryan	Section 28	Meeting of Government	Part-grant
8	Email 04/02/21 from Ken Spratt to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
9	Email 04/02/21 from Ken Spratt to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
9-10	Email 04/02/21 from Ken Spratt to John Coleman	Partial text of forwarded email from Minister E. Ryan	Section 28	Meeting of Government	Part-grant
12	Email 10/02/21 from Niamh Redmond to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
13	Attachment to Email 10/02/21 from Niamh Redmond to John Coleman	Partial email address	Section 37	Personal Information	Part-grant
15	Email 11/03/21 from Ken Spratt to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
16-17	Email thread 12/03/21 Ken Spratt and John Coleman	Email addresses	Section 37	Personal Information	Part-grant



		phone numbers			
19-20	Email thread 11/03/21 Ken Spratt and John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
23	Email thread 25/03/21 Ken Spratt and John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
25	Email 29/04/21 Ken Spratt and John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
26	Email thread 21/05/21 John Coleman to Department of the Taoiseach	Email addresses phone numbers	Section 37	Personal Information	Part-grant
28	Email 09/11/21 Niamh Redmond to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
29	Email 16/12/21 Niamh Redmond to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
30-31	Attachment to Email 16/12/21 Niamh Redmond to John Coleman letter to directors	NA	NA	NA	Grant
32	Email thread 10/01/22 Ken Spratt to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
34	Email thread 16/02/22 Graham Doyle to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
36	Email thread 13/04/22 Ken Spratt to John Coleman	Email addresses phone numbers	Section 37	Personal Information	Part-grant
38-56	Slides LDA Update Feb 2022 Attachment from Email thread 16/02/22 Graham Doyle to John Coleman	NA	NA	NA	Grant
57-76	Slides Update for the Joint Oireachtas Committee... February 2022 Attachment from Email thread 16/02/22 Graham Doyle to John Coleman	NA	NA	NA	Grant
		Total number of pages			175
		Total number of pages for full release			54
		Total number of pages for partial release			22
		Total number of pages being withheld			99



Appendix 2: Relevant legislative sections

Section 28 - Meetings of the Government

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.

Section 36 - Commercially Sensitive Information states

36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation,

Section 37-Personal Information

(1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

Personal information is defined at Section 2 of the FOI Act and includes the following:

Section 2 -- Interpretation

2. (1) In this Act-



"personal information" means information about an identifiable individual that, either-

(a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or

(b) is held by an FOI body on the understanding that it would be treated by that body as confidential,

and, without prejudice to the generality of the foregoing, includes-

(iii) information relating to the employment or employment history of the individual,

(v) information relating to the individual in a record falling within section 11(6)(a).

(vii) information relating to any criminal history of, or the commission or alleged commission of any offence by, the individual,

