

29th February 2021

Re: Freedom of Information request 202102- Request Part Grant.

Dear ,

I refer to your request, dated and received on 1st February 2021 which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

1. *Any correspondence relating to engagement with local communities on the proposed St Kevin's site development*
2. *Any correspondence with Cork City Council on the proposed St Kevin's site development*
3. *Any correspondence with the Department of Housing on the proposed St Kevin's site development*
4. *Any correspondence relating to the percentage of housing to be affordable/social in the proposed St Kevin's site development*

Upon receipt of your request, a search was conducted with various sections of the LDA and as a consequence a number of records were identified. The sections of the FOI Act which deny access to information are known as its exemptions.

I wish to inform you that I have decided to part grant your request on the 29th of February 2021.

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 four requests individually.

Findings, particulars and reasons for decisions to deny access.

1.

In respect to part one of your request where you request '*Any correspondence relating to engagement with local communities on the proposed St Kevin's site development*' I am granting your request. The records requested are attached to this decision letter for your information.

2.

In respect of part two of your request where you request *‘Any correspondence with Cork City Council on the proposed St Kevin’s site development’* 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 29 (1) (a) and section 36 (1) (b) of the FOI Act. These records are included in the Schedule of Records in Appendix 1.

3.

In respect of part three of your request *‘Any correspondence with the Department of Housing on the proposed St Kevin’s site development’* I am part granting 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) and section 29 (1) of the FOI Act. These records are included in the Schedule of Records in Appendix 1.

4.

In respect of part four of your request *‘Any correspondence relating to the percentage of housing to be affordable/social in the proposed St Kevin’s site development’*.

I wish to inform you that I am refusing your request. For your information, the records schedule relating to this part of the request is provided in Appendix 1.

By way of information the number of social and affordable homes provided on a site is subject to the relevant government policy, which is proposed in the LDA Bill, currently debated in the Daíl. The LDA is a taker of this policy, not a maker. I also bring to your attention as per PQ 895 asked on 23/6/2020, the response given regarding the guidelines for levels of social housing. I wish to inform you that I am refusing these records in accordance with section 15, as some of this information is in the public domain.

The LDA is in a possession of a Draft St Kevin’s Strategic Housing Development, some of which is within the scope of part four of your request. I wish to inform you that I am refusing this record in accordance with section 29 (1) (a) and section 36 (1) (b) of the FOI Act. These records are included in the Schedule of Records in Appendix 1.

Harm Test and Public Interest Test

There is a Harm test and Public Interest Test associated with section 29 and 36 of the FOI Act whereby my decision must be made having fully considered the harm and 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 serious adverse effect on the deliberations of the LDA and have potential negative impact on commercially sensitive information provided to, and held by, the LDA.

I have considered the public interest issues which arise in part two, three and four of 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.

In considering the public interest factors which favour withholding the records as detailed in part two, three and four of your request, 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.
- That there is no overriding public interest that would outweigh the right of a public body to make significant decision that the body proposes.

Having balanced the public interest factors both for and against the release, I decided that the public interest in preserving the information and the reasonable expectation that information can be maintained by the LDA without prejudicing future financial endeavors by external service providers outweighs the public interest which would be served were the records released to you.

I have considered the provisions of Section 29 (2) and decided that they do not have any bearing on the decision as the overriding interest is to protect the sensitive commercial and financial information in relation to part two, three and four of your request.

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, 29 and 36 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, 29 and 36 have been applied and should therefore be withheld.

Right of Appeal

In the event that you are unhappy with this decision you may appeal it. In the event that 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. 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 telephone on (01) 9103400.

Yours sincerely,



Monika Szyszko,
Compliance Officer

Appendix 1: Schedule of Records

Requester name: Request Re:202102					
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision
Page 5	CCC folder (124 pages total)	Paragraph	Section 29	Deliberation of FOI Bodies	Part-grant
Page 2	DoH folder (2 pages total)	paragraph	Section 29	Deliberation of FOI Bodies	Part-grant
32	Engagement with local communities	N/A	N/A	N/A	grant
10 pages	Draft Design statement	N/A	Section 29	Deliberation of FOI Bodies	refuse
15 pages	St Kevin's Part V cost plan and unit details-draft	N/A	Section 29 and section 36	Deliberation of FOI Bodies Commercially Sensitive Information	refuse
15 pages	Draft St Kevin's Strategic Housing Development	N/A	Section 29 and section 36	Deliberation of FOI Bodies Commercially Sensitive Information	refuse
19 pages	St Kevin's Part V Application Costs-Draft	N/A	Section 29 and section 36	Deliberation of FOI Bodies Commercially Sensitive Information	refuse
3	Email 12/5/2020 to the Department of Housing re Draft LDA Strategic Plan	N/A	Section 28	Meetings of the Government	refuse
3	Email 16/6/2020 to the Department of Housing re: Site transfer	N/A	Section 28	Meetings of the Government	refuse
3	Email to Dept of Housing RE PQ 895 dated 23/6/2020	N/A	Section 15	Refusal on Administrative Ground-information is already in public domain	refuse
20	Email to the Dept of Housing	N/A	Section 28 and section 29	Meetings of the Government	refuse



	9/9/2020 re LDA Property Update May 2020			Deliberation of FOI Bodies	
		Total number of pages			
		Total number of pages for full release			32
		Total number of pages for partial release			126
		Total number of pages being withheld			88



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 29 - Deliberations of FOI bodies states

29. (1) A head may refuse to grant an FOI request—

- (a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes)

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,

