

23<sup>rd</sup> July 2021

**Re: Freedom of Information request 202117- Request Part-Grant.**

Dear,

I refer to your request, originally dated and received on 23<sup>rd</sup> of June 2021, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

- A. *Copies of the minutes of all LDA board meetings in 2021;*
- B. *Copies of all correspondence to/from board members on the subject of departures/resignations from the LDA board between January 1, 2021 and June 23<sup>rd</sup> 2021.*

I wish to inform you that I have decided to part-grant your request on the 23<sup>rd</sup> July 2021.

The purpose of this letter is to explain my decision.

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

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.

**Part A**

In respect to part A of your request *Copies of the minutes of all LDA board meetings in 2021*, I am part-granting your request. The records requested are attached to this decision letter for your information.

I wish to inform you that I am refusing a number of records in accordance with Section 29(1), 36(1), Section 37(1) and 40(1) of the FOI Act. These records are included in the Schedule of Records in **Appendix 1**.

**Section 29 – Deliberation of Public Bodies**

(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), and
- b) the granting of the request would, in the opinion of the head, be contrary to the public interest,

### **Section 36-Commerically Sensitive Information**

- (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains
  - a) trade secrets of a person other than the requester concerned
  - 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, or
  - c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

### **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,*

## **Section 40 Financial and economic interests of the State**

- (1) 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—
- a) access to the record could reasonably be expected to have a serious, adverse effect on the ability of the Government to manage the national economy or on the financial interests of the State,
  - b) premature disclosure of information contained in the record could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the record would involve disclosure of the information that would, in all the circumstances, be premature,
  - c) access to the record could reasonably be expected to have a negative impact on decisions by enterprises to invest or expand in the State, on their research activities or on the effectiveness of the industrial development strategy of the State, particularly in relation to the strategies of other states, or
  - d) access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

### ***Harm Test and Public Interest Test***

There is Harm test and Public Interest Test associated with section 29, 36, 37 and 40 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 part A of 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.

## **Part B**

In respect to part **B** of your request *Copies of all correspondence to/from board members on the subject of departures/resignations from the LDA board between January 1, 2021, and June 23rd 2021* I am refusing your request.

In this regard, I am refusing your request in accordance with Section 15(1)(a) of the Freedom of Information Act 2014, which states:

### **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 in the LDA to identify records held which were within the scope of your request. I have been advised that the records you have sought are not held by the LDA. However, the Department of Housing, Planning and Local Government may be in possession of these records. Should you wish to submit a request under the FOI 2014, you can do so by email to [foi@housing.gov.ie](mailto:foi@housing.gov.ie).

## **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, 2<sup>nd</sup> Floor, Ashford House, Tara Street, Dublin 2 or by e-mail to [foi@lda.ie](mailto: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, 2<sup>nd</sup> 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 202117**) 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](http://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.



Monika Szyszko,  
Compliance Manager

