

09 February 2023

Re: Freedom of Information Request 202303 - Request Part Granted.

Dear _____,

I refer to your request dated and received by this office on the 11th of January 2023, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

- A. *Correspondence/memos/briefings and attachments between the Chief Executive of the LDA and cabinet ministers, including the Taoiseach and Tánaiste, or SecGens of govt departments in 2022*
- B. *Correspondence between the chairman of the LDA and cabinet ministers, including Taoiseach and Tánaiste, or SecGens of govt departments in 2022*

I wish to inform you that I have decided to part-grant your request on the 09th of January 2023.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decisions.

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.

I divided your request into part A and B to explain my decision.

Part A

In respect to part A of your request where you requested *Correspondence/memos/briefings and attachments between the Chief Executive of the LDA and cabinet ministers, including the Taoiseach and Tánaiste, or SecGens of govt departments in 2022* I wish to inform you that I am part-grating your request. The records requested are attached to this decision letter for your information. I am refusing a number of records in accordance with section 30(1)(c), 40(1)(b) of the FOI Act. These records are included in the Schedule of Records in **Appendix 1**.

The FOI Act 2014 also provides that in certain circumstances, a public body may refuse the release of certain records or part thereof. As such a number of redactions have been applied to the attached records. These redactions are detailed in the Schedule of Records in **Appendix 1**.



The attached records contain information which is of a commercially sensitive nature. In accordance with the provisions of Section 36 of the Act, I am refusing the release of part of the record. Section 36 states that:

Commercially Sensitive Information

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, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

I am satisfied that the release of certain commercial information contained within these records would prejudice the competitive position of the LDA.

Public Interest Test

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

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 commercial confidentiality is outweighed by the needs of the public.

In considering the public interest factors which favour withholding the records as detailed in part one of your request, I have taken account of the following:

- Allowing a public body to hold commercial information without undue access by members of the public.
- The public interest is not best served by releasing these records.
- That the LDA can conduct its commercial activities with external stakeholders in a confidential manner.
- That there is no overriding public interest that outweighs the individual's right to privacy in this case commercial activities.

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 in confidential manner by the LDA outweighs the public interest which would be served were the detail released to you.



Section 37-Personal Information

Under the FOI Act, records are released without any restriction as to how they may be used and thus, release under the FOI Act, is in effect, and regarded as being released to the world at large. As a result, I am conscious of my obligations to retain personal information in a confidential and secure manner and prevent personal information from being released into the public domain unnecessarily. section 2 of the FOI Act defines personal information as follows:

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 37(1) provides that a public body shall refuse to grant a request if access to the records concerned would involve the disclosure of personal information. I am satisfied that parts of certain records relate to third parties, and I am satisfied that the records consist of the personal

37. (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).

As section 37 requires a public interest test be carried out. I have considered the public interest issues which arise in this case 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.
- That there is more than just a transitory interest by the public in this information.
- 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 public interest is not best served by releasing these records.
- That the Organisation can conduct its business in a confidential manner.
- That there is a reasonable and implied expectation that sensitive personal information will remain confidential.
- That there is no overriding public interest that outweighs the individual's right to privacy.

- Allowing a public body to hold personal information without undue access by members of the public.

A public interest test was carried out when considering the release of the records but, having balanced the factors both for and against the release, I have decided that the public interest in preserving personal information would best be served by particular parts of the records provided.

In relation to the refusal of certain records of part of therefore, some records or part of them were refused under section 29(1), 30 (1)(c) and 40 of FOI 2014.

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 30 – Functions and Negotiations of FOI Bodies

30.(1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—

- (c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or an FOI body.

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—

- 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,

As section 29, 30 and 40 requires a public interest test be carried out. I have considered the public interest issues which arise in this case 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.

- That there is more than just a transitory interest by the public in this information.
- The right to financial 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 public interest is not best served by releasing these records.
- That the Organisation can conduct its business in a confidential manner.
- That there is a reasonable and implied expectation that sensitive personal information will remain confidential.
- That there is no overriding public interest that outweighs the organisation's right to financial privacy.
- Allowing a public body to hold financial sensitive information without undue access by members of the public.

Having reviewed the records for part one 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 relation to part B of your request where you request *Correspondence between the chairman of the LDA and cabinet ministers, including Taoiseach and Tánaiste, or SecGens of govt departments in 2022* I wish to inform you that I am refusing your request under section 15(1)(b)

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,

2. Right of Appeal

In the event that you are unhappy with this decision you may appeal against 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:

The Land Development Agency DAC
IE61AIBK93101264101092
BIC: AIBKIE2D

You must ensure that your FOI reference number (**FOI 202303**) 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 telephone on (01) 9103400.

Yours sincerely,



Monika Szyszko,
Compliance Manager

Appendix 1: Schedule of Records

Requester name:		Request Re:202303				
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision	
1-3	06.04.2022 Letter to industry re Roundtable	Names (Page 3 of Record)	Section 37	Personal Information	Part grant	
4-5	220426_Tivoli_Flogas_EEP Submission_Final – FLOGAS	email address (Page 1 of Record)	Section 37	Personal Information	Part grant	
6	Confirmation of attendance re Roundtable on Mon 11_04_22	Name and email address (Page 1 of Record)	Section 37	Personal Information	Part grant	
7	Correspondence from Minister O'Brien	Name Phone number and email address (Page 1 of Record)	Section 37	Personal Information	Part grant	
8-9	FW_ Meeting request from Minister Eamon Ryan	Name Phone number and email address (Pages 1 and 2 of Record)	Section 37	Personal Information	Part grant	
10	HfA lands	NA – Release in Full	NA	NA	Grant	
11	LDA	Names and email address (Page 1 of Record)	Section 37	Personal Information	Part grant	
12	Meeting with Minister Ryan	Names and email address (Page 1 of Record)	Section 37	Personal Information	Part grant	
13 - 16	RE_ HfA lands	Names and email address (Pages 1 and 2 of Record)	Section 37	Personal Information	Part grant	
17 - 20	RE_ Housing for All Strategy Implementation -	Discussion of a specific site Page 1 of Record	Section 29 Section 36	Deliberations of FOI body Commercially Sensitive Information	Part Grant	
17 - 20	RE_ Housing for All Strategy Implementation	Continued from	Section 29		Part Grant	



		previous page Discussion of a specific site	Section 36	Deliberations of FOI body	
		Names and email address (Page 2 of Record)	Section 37	Commercially Sensitive Information	
				Personal Information	
17 - 20	RE_ Housing for All Strategy Implementation	Discussion of a specific site	Section 36	Commercially Sensitive Information	Part grant
		Names and email address (Page 3 of Record)	Section 37	Personal Information	
21	RE_ Housing Summits	Name Phone number and email address (Page 1 of Record)	Section 37	Personal Information	Part grant
22 - 3	RE_ LDA	Names and email addresses (Page 1 of Record)	Section 37	Personal Information	Part grant
24 – 26	RE_ Meeting request from Minister Eamon Ryan	Names and email addresses (Page 1 and 2 of Record)	Section 37	Personal Information	Part grant
27	RE_ Meeting with Minister O'Brien	Names phone numbers and email addresses (Page 1 of Record)	Section 37	Personal Information	Part grant
28 - 30	RE_ Observation by LDA on the Draft External Emergency Plan (EEP) – Flogas Facility_ Tivoli Cork_	Commentary re particular site	Section 30	Functions and Negotiations of FOI Bodies	Part grant
		Names and email addresses (Page 1 of Record)	Section 37	Personal Information	
28-30	RE_ Observation by LDA on the Draft External Emergency Plan (EEP) – Flogas Facility_ Tivoli Cork_	Names phone numbers and email addresses (Page 2 of Record)	Section 37	Personal Information	Part grant



31-34	RE_ Online meeting _ briefing regarding Cork Docklands	Names phone numbers and email addresses (Page 1 and 2 of Record)	Section 37	Personal Information	
	08122022	Refused	Section 30(1)(c), Section 40(1)(b)	Functions and negotiations of FOI bodies Financial and economic interests of the State	
	Letter to Denis Barry LDA	Refused	Section 30(1)(c) Section 40(1)(b)	Functions and negotiations of FOI bodies Financial and economic interests of the State	
			Total number of pages		43
			Total number of pages for full release		12
			Total number of pages for partial release		22
			Total number of pages being withheld		9

