

15th February 2023

Re: Freedom of Information Request 202307 - Request Part Granted.

Dear ,

I refer to your request dated 16th of January and received by this office on the 17th, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

- *A copy of the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study"*
- *All correspondence between the author of the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study" and John Coleman (chief executive of the LDA) between 1 October 2020 and May 2021*
- *All correspondence (from the period 1 October 2020 and 31 May 2021) between John Coleman (chief executive of the LDA) and Barry O'Brien (Head Of Investment) and Phelim O'Neill (Head Of Property) about the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study"*

I wish to inform you that I have decided to part-grant your request on the 15th of February 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, B and C to explain my decision.

Part A

In relation to part A of your request where you requested *A copy of the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study"* I wish to inform you that I am refusing your request under section 36(1) and 29(1).

The FOI Act 2014 provides that in certain circumstances, a public body may refuse the release of certain records or part thereof. As I withhold the record requested as it contains information which is of a sensitive nature. In accordance with the provisions of Section 36 and 29 of the Act, I am refusing the release of the record.

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 this record would prejudice the competitive position of the LDA.

Deliberations of Public Bodies

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

if record concerned contains matter relating to the deliberative process 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.

Public Interest Test

There is a Public Interest Test associated with section 36 and 29 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.

Part B

In relation to part B of your request where you request *All correspondence between the author of the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study" and John Coleman (chief executive of the LDA) between 1 October 2020 and May 2021* I wish to inform you that I am part-granting your request.

The FOI Act 2014 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**.

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).

Public Interest Test

There is a Public Interest Test associated with section 37 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 privacy 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 personal 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.

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.

Part C

In relation to part C of your request where you request *All correspondence (from the period 1 October 2020 and 31 May 2021) between John Coleman (chief executive of the LDA) and Barry O'Brien (Head Of Investment) and Phelim O'Neill (Head Of Property) about the report called "Draft Working Paper: European Apartment Construction Cost Comparison Study"* I wish to inform you that I am refusing your request under section 15(1)(b) as the record does not exist.

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 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 202307**) 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:202307			
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision
1	Email dated 20 April 2021	Email address and Phone number of former LDA employee	Section 37	Personal Information	Part Grant
2	Email dated 12.1.2022	Email address and Phone number of former LDA employee	Section 37	Personal Information	Part Grant
40	20.04.2021 v4 Draft Apartment Cost Comparison	N/A	Section 36 Section 29	Commercially Sensitive Information Deliberations of FOI Body	Refusal
		Total number of pages			42
		Total number of pages for full release			0
		Total number of pages for partial release			2
		Total number of pages being withheld			40

