

11th May 2023

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Re: Freedom of Information Request 202314 - Request Part Granted.

Dear ,

I refer to your request dated 12th of April 2023, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

- Copies of all correspondence to/from Land Development Agency chief executive John Coleman and chairman Cormac O'Rourke and the following individuals:
 - A. Taoiseach Leo Varadkar
 - B. Minister for Housing Darragh O'Brien
 - C. Department of Housing secretary general Graham Doyle
- The correspondence can be limited to items received/sent between 1/1/2023 and 12/4/2023.
- The records should include copies of any documents attached or enclosed with the correspondence.

I wish to inform you that I have decided to part-grant your request on the 11th of May 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. A number of records have been identified and these are attached herewith.

I divided your request into parts A, B and C by correspondent to explain my decision.

Part A

In relation to part A of your request where you request *copies of all correspondence to/from Land Development Agency chief executive John Coleman and chairman Cormac O'Rourke and the following individuals: Leo Varadkar* 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,*



I am satisfied that no such records exist.

Part B

In relation to part B of your request where you request *copies of all correspondence to/from Land Development Agency chief executive John Coleman and chairman Cormac O'Rourke and the following individuals: Minister for Housing Darragh O'Brien.*

In respect to the records requested I wish to inform you that I am part-granting your request. The records requested are attached to this decision letter for your information. 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 in accordance with Section 37(1) of the FOI Act. Further I am refusing a number of records in accordance with section 31(1)(a) and section 40(1)(b) and 40(2)(o), 40(2)(p) of the FOI Act. These records are included 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. Additionally, the LDA as a matter of course redacts the mobile phone numbers and email addresses of employees as these are part of the body's IT security management.

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 personal information of these third parties. Accordingly, I find that section 37(1) of the Act applies to the records at issue.

Section 37(1) of the FOI Act states as follows:

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 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.
- 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:

- That there is a reasonable and implied expectation that sensitive personal information will remain confidential.
- The public interest is not best served by releasing these records.
- That the LDA can conduct its business 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.

In relation to type of records refused under FOI 2014 and attached in the Schedule of Records in **Appendix 1** for your information, the records were refused under the following sections:

Section 31 states that:

Parliamentary, Court and Certain Other Matters

31(1) A head shall refuse to grant an FOI request if the record concerned—

(a) Would be exempt from production in proceedings in a court on the ground of legal professional privilege.

I am satisfied that this type of record attaches legal professional privilege.

A record being an attachment to both email threads consists of a signed letter from the Minister and it constitutes an ongoing financial process. Therefore, I am refusing its release under Section 40 of the Act. This record is detailed in the Schedule of Records in **Appendix 1**.

As per Section 40 of the FOI Act:

Section 40 - Financial and Economic Interests of the State

40(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,

(2) This subsection applies to a record relating to—

(o) the economic or financial circumstances of a public body,

(p) investment or provision of financial support by or on behalf of the State or a public body,

As section 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.
- Information about how decisions are reached, particularly of those decisions that are in the public domain.
- That there is more than just a transitory interest by the public in this information.
- The right to information in relation to the spending of public funds.

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 protect financial and economic interests of the State and conduct of business.
- Protecting the State from the negative impact of release of certain sensitive information.
- Protecting the business interests of the Organisation and allowing business to operate without undue intrusion.

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 C

In relation to part C of your request where you request *copies of all correspondence to/from Land Development Agency chief executive John Coleman and chairman Cormac O'Rourke and the following individuals: Department of Housing secretary general Graham Doyle*. 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,

I am satisfied that no such records exist.



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 202314**) 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:202314				
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision	
1	Email thread Re: Correspondence from Minister O'Brien	Personal Information	Section 37	Personal Information	Part Grant	
2-3	Email thread FW: Correspondence from Minister O'Brien	Email thread withheld in full as attracts legal privileges.	31 a	Parliamentary, Court and Certain Other Matters	Refuse	
4-5	HLG 00030-23 Cormac O'Rourke signed attachment to both above email threads	Signed letter from Minister dated January 31, 2023.	40	Financial and Economic Interests of the state	Refuse	
		Total number of pages			5	
		Total number of pages for full release			0	
		Total number of pages for partial release			1	
		Total number of pages being withheld			4	

