

07 June 2023

Re: Freedom of Information Request 202317 - Request Part Granted.

Dear

I refer to your request dated 9th May 2023 and received by this office on the same date, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

Under the Freedom of Information Act 2014, I would like to receive a copy of all letters, reports, surveys of lands, barracks, installations that are currently owned by the Department of Defence that have been considered by the Land Development Agency for use for housing development since 01 June 2022. I realise some reports are already in the public domain, about possible uses of current lands/barracks owned by the Department of Defence. However, if reports, surveys, lands considered other lands, barracks or installations separately or in addition to these, I would like to receive a copy of those reports, surveys, letters, or plans.

I am aware that the LDA has considered use of Cathal Brugha Bks, Dun Ui Mhaoliosa (Galway), Collins Bks (Cork) and Columb Bks (Mullingar). These are all owned and managed by the Department of Defence. Therefore, if the Land Development Agency considered other lands, barracks or installations for development that are currently owned and managed by the Department of Defence, I would like to receive a copy of those reports, surveys, plans or letters if these reports were completed on or after 01 June 2022 please.

I wish to inform you that I have decided to part-grant your request on the 7th of June 2023.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decisions.

Upon receipt of your request, it was forwarded to the relevant sections of the Land Development Agency where a search was conducted in respect of same and a number of records were identified in relation to Cathal Brugha Barrack and Bricin's Military Hospital. 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**.

These records have been redacted in accordance with Section 36(1), Section 37 (1) and Section 29 of the FOI Act 2014.

C



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.

Additionally, one record related to a project that was relevant to lands not owned or managed by the Department of Defence, but it was attached to an email within the scope of your request. The non-relevant attachment is, therefore, refused under the provisions of section 36(1)(b) & 36(1)(c) as they contain commercially sensitive information.

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.

I am satisfied that some of the information contained in the records provided in respect of this request relates to a third party. As such, I am satisfied that the records consist of the personal information of these third parties. Accordingly, I find that Section 37(1) and (7) of the Act applies to the records at issue:

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.

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).

(7) Notwithstanding paragraph (a) of subsection (2), a head shall, subject to paragraphs (b) to (e) of that subsection and subsections (5) and (8), refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would, in addition to involving the disclosure of personal information relating to the requester, also involve the disclosure of personal information relating to an individual or individuals other than the requester.

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 personal information but having balanced the factors both for and against the release, I decided that the public interest in preserving the personal information and the reasonable expectation that information be maintained in a confidential manner by the Land Development Agency outweighs the public interest which would be served were the records released to you.

Certain information within these records is part of an ongoing deliberative process between within the LDA, and as such will form an integral part of any outcome that is yet to be decided upon.

Section 29 of the Freedom of Information Act 2014 refers as follows:

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*

As section 29 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.
- Ensuring fairness of procedures and that decisions are fair and equitable and evenly applied.

In considering the public interest factors which favour withholding the records, I have taken account of the following:

- Allowing a public body to make its decisions without undue intrusion into the process.
- The public interest is not best served by releasing these records.
- Premature release could negatively affect future decision-making processes.
- Premature release could contaminate the decision-making process.

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.

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 records have been refused to be released. These records are detailed in the Schedule of Records in **Appendix 1**.

A number of records constitute photographs and maps of Cathal Brugha Barracks that were provided to the Land Development Agency in confidence. Based on the correspondence between the Land Development Agency and the Defence Forces indicating that photography of certain areas would not in the ordinary course of events be permitted to public, it can reasonably be concluded the refusal of these records under section 33(1)(a) and 33(3)(c) 33(3)(i) is justified.

Security, defence and international relations

33.(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, access to it could reasonably be expected to affect adversely—

(a) the security of the State,

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

(c) contains information communicated in confidence—

(i) to any person in or outside the State from any person in or outside the State (including any law enforcement agency) and relating to a matter referred to in subsection (1), or to the protection of human rights and expressed by the latter person to be confidential or to be communicated in confidence

There is no public interest test associated with Section 33.

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 202317**) 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:202317 | | | |
|-----------------|---|---|-----------------------------|--|---------------------------|
| Page number | Description of document | Deletions | Relevant section of FOI Act | Reasons for deletion | Decision Maker's decision |
| 1 pages | Map of Cathal Brugha Barrack | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 1 page | Photograph | N/A | Section 33 | Security, defence and international relations | Refuse |
| 2 pages | Attachment Summary Note Bricins | 1 Paragraph | Section 36 | Commercially Sensitive Information | Part grant |
| 14 Pages | withheld attachment to FW LDA Updates – 1111, refers to a project unrelated to defence forces | Commercially sensitive information outside of FOI request scope | Section 36 | Commercially Sensitive Information | Refuse |
| 2 pages | RE MC064 - Site Visit Friday 14-04-23 at 1200 | paragraph Individuals' names and email addresses | Section 36 Section 37 | Commercially Sensitive Information Personal information | Part grant |
| 1 page | MC064 - Clarification request | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 2 pages | 230417_MC064 Clarification Register (Int) | NA | NA | NA | Grant |



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|----------|--|---|--------------------------|--|------------|
| 1 page | Email Cathal Brugha | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 2 pages | FW Cathal Brugha Site Visit | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 3 pages | RE Cathal Brugha Site Visit | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 3 pages | RE Cathal Brugha Site Visit2 | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 34 pages | National Inventory Architectural Heritage Cathal Brugha Barracks | Map on page 34 of record | Section 33 | Security, defence and international relations | Part grant |
| 2 pages | 230418_MC064_RFT Clarifications Response Reg | NA | NA | NA | Grant |
| 7 pages | RE Cathal Brugha Visit | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 2 pages | RE 230213 e-int re URDF funding progress update actions | paragraph Individuals' names and email addresses | Section 29 Section 37 | Deliberations of FOI Bodies Personal information | Part grant |
| 2 pages | FW LDA Updates - 1111 | paragraph Individuals' names and email addresses | Section 36 Section 37 | Commercially Sensitive Information Personal information | Part grant |
| 11 pages | Attachment-Columb Barracks Project Community Report as of 11.11.2022 | Individuals' names and email addresses | Section 37 | Personal information | Part grant |
| 16 pages | FW Land Development Agency - Media Review – PM | NA | NA | NA | Grant |
| 2 pages | RE Tender Docs | Personal information | Section 37 | Personal information | Part grant |
| | | Total number of pages | | | 100 |
| | | Total number of pages for full release | | | 62 |
| | | Total number of pages for partial release | | | 31 |
| | | Total number of pages being withheld | | | 7 |

