

23<sup>rd</sup> August 2023

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**Re: Freedom of Information request 202322- Request Part-Grant.**

Dear,

I refer to your request, dated and received on 25<sup>th</sup> of July 2023, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (the LDA).

*I am writing to make an open government request for all the information to which I am entitled under Section 12 of the FOI Act 2014. In order to assist you with this request, I am outlining my query as specifically as possible. If, however, this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.*

*I'm requesting all records of communication between the Land Development Agency and Kerry County Council in relation to the site of the former St Finan's Hospital in Killarney, between 1st September 2021 and the date of acknowledgement of this request, and any reports in the possession of the LDA in relation to the above site.*

*The request is for records to include – but not limited to: internal and external correspondence, minutes of meetings, notes or memos in relation to discussions or telephone calls. I would like to receive the records electronically and preferably in their original formatting. I understand that under the Act, I should be entitled to a response within 20 working days.*

*I would be grateful if you could confirm in writing that you have received this request. I look forward to hearing from you in the near future.*

I wish to inform you that I have decided to part-grant your request on the 23<sup>rd</sup> August 2023.

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.

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. These redactions are detailed in the Schedule of Records in **Appendix 1**.



I am part – granting records you seek in accordance with Section 29 of the FOI Act. Certain information within these records is part of an ongoing deliberative process between the LDA and the Kerry County Council 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:

***Deliberations of FOI bodies***

*29(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,*

*and, without prejudice to the generality of paragraph (b), the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make.*

***Public Interest Test***

As per section 29 of the FOI Act, 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.

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, on balance, decided that the public interest in preserving the integrity of the negotiation process would be better served by withholding the relevant parts of these records.



As such a number of redactions have been applied to the attached records under Section 36 of the Act. These redactions are detailed in the Schedule of Records in **Appendix 1**.

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 sensitive information contained within these records would prejudice the competitive position of the LDA. This therefore is commercially sensitive in accordance with the provisions of Section 36 of the Act

I am cognisant of the fact that the release of information under the Act is, in essence, a release to the public at large. If the records were made available to you it is reasonable to expect that it would prejudice the ability of the LDA to compete negotiations in the future as competitors would be aware of its position.

I am of the view that the release of this sensitive records could reasonably be expected to result in a material financial loss by the LDA as it could prejudice its competitive position in the conduct of its business.

Furthermore, releasing this information which could prejudice any current or future negotiations by the LDA.

I am refusing the release of full or parts of the records 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.
- The security of the LDA's IT systems.
- 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. 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,*

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.

*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.
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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.

## **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](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, 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 202322) is included in the payment details.

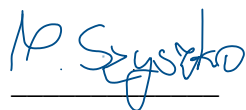
You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the 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.

Yours sincerely,



Monika Szyszko,

Compliance Manager

## Appendix 1: Schedule of Records

Requester name:		Request:202322			
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision
1-5 pages	RE Meeting with the Chief Executive Kerry County Council_ on Thursday 6th April at 12.30 in Killarney	Personal Information (name of third-party private sector employee/mobile numbers and email addresses of the LDA's employees)	Section 37	Personal Information	Part grant
6	FW Strictly Private Confidential - Sale of St. Finans c. 30 acres Part 2	2 paragraphs  Personal Information name of third-party private sector employee/mobile numbers and email addresses of the LDA's employees)	Section 36  Section 37	Commercially Sensitive Information  Personal Information	Part grant
7-8	RE LDA KCC	Two paragraphs relating to Finan's building.  Personal Information name of third-party private sector employee/mobile numbers and email addresses of the LDA's employees)	Section 29  Section 37	Deliberations of FOI Body  Personal Information	Part grant



8 pages	Attch to email dated 9.5.23 1 Report. Rev A	N/A	Section 36	Commercially Sensitive Information	Refusal
1 page	Attch to email dated 9.5.23 030415 St. Finan's Folios Main	N/A	Section 36	Commercially Sensitive Information	Refuse
1 page	Attch to email dated 9.5.23 150515 15.5.15 Land Registry Folio Map 1st Registration	N/A	Section 29	Deliberations of FOI Bodies	Refuse
3 pages	Attch to email dated 9.5.23 211211 St. Finan's Photos	N/A	Section 29	Deliberations of FOI Bodies	Refuse
1 page	Attch to email dated 9.5.23 CNU Site Comparison	N/A	Section 29	Deliberations of FOI Bodies	Refuse
1 page	Attch to email dated 9.5.23 Fire Alarm Zones	N/A	Section 29	Deliberations of FOI Bodies	Refuse
1 page	Attch to email dated 9.5.23 GFP O'Connor Unit	N/A	Section 29	Deliberations of FOI Bodies	Refuse
4 pages	Attch to email dated 9.5.23 HSE 2 Appendix A_Maps	N/A	Section 29	Deliberations of FOI Bodies	Refuse
1 page	Attch to email dated 9.5.23 KIL-MCA-00-00-DR-A-0016 Overall Site Plan	N/A	Section 29	Deliberations of FOI Bodies	Refuse
3 pages	Attch to email dated 9.5.23 St. Finan's All Plans 30.1.12	N/A	Section 29	Deliberations of FOI Bodies	Refuse





		<b>Total number of pages</b>	32
		<b>Total number of pages for full release</b>	0
		<b>Total number of pages for partial release</b>	8
		<b>Total number of pages being withheld</b>	24

