

31<sup>st</sup> August 2023

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**Re: Freedom of Information request 202323- Request Refused.**

Dear,

I refer to your request, originally dated 01/08/2023 and received on 02/08/2023, 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 business case, cost-benefit analysis, or other such document associated with LDA plans to purchase privately owned sites (as outlined in the following newspaper article <https://www.irishtimes.com/ireland/housing-planning/2023/07/21/land-development-agency-to-start-buying-privately-owned-sites/>)*

*- a copy of any correspondence between the LDA CEO (or his office) and the Department of Housing with regard to the above plan.*

I wish to inform you that I have decided to refuse your request on the 31<sup>st</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.

For clarity I am dividing your request into parts A and B.

**Part A**

In respect of part A of your request where you sought “a copy of the business case, cost-benefit analysis, or other such document associated with LDA plans to purchase privately owned sites (as outlined in the following newspaper article: <https://www.irishtimes.com/ireland/housing-planning/2023/07/21/land-development-agency-to-start-buying-privately-owned-sites/>)”, 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 have been notified that one record within the scope of your request was identified. This record is included in the Schedule of Records in **Appendix 1**.

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

### **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 this record 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 record was 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.

### **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.

I am also refusing the release s of this record under the provisions of section 29 (1). This record is part of a deliberative process that is ongoing within the LDA and as such will form an integral part of any outcome that is yet to be decided upon.

### **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**

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 records.

### **Part B**

In respect of part B of your request where you sought “a copy of any correspondence between the LDA CEO (or his office) and the Department of Housing with regard to the above plan.”, details of your request were provided to the relevant section within the LDA to identify records held which were within the scope of your request.

In this regard, I am to advise you that no records have been identified as sought by you.

Therefore, I am refusing this part of your request in accordance with Section 15(1)(a) of the Freedom of Information Act 2014, which states:

**Refusal on administrative grounds to grant FOI requests.**

I5(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](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 202323) 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

<b>Requester name:</b>		<b>Request:202323</b>			
<b>Page number</b>	<b>Description of document</b>	<b>Deletions</b>	<b>Relevant section of FOI Act</b>	<b>Reasons for deletion</b>	<b>Decision Maker's decision</b>
1	LDA Board Paper - Expressions of Interest (EOI) process for the sale of Residential Land/Development Sites to the Land Development Agency Dated 29/06/2023	N/A	Section 36  Section 29	Commercially Sensitive Information  Deliberations of FOI Body	Refusal
		<b>Total number of pages</b>			3
		<b>Total number of pages for full release</b>			0
		<b>Total number of pages for partial release</b>			
		<b>Total number of pages being withheld</b>			3

