

15th December 2023

Re: Freedom of Information Request 202340 – Request Part Granted.

Dear ,

I refer to your request dated 01st of November 2023 and accepted by this office on the 17th of November 2023, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

All correspondence from January 1st 2023 to November 1st 2023 between the Land Development Agency and:

- a) any official or representative of Horse Racing Ireland; and/or*
- b) any official of DLR county council*

Regarding the zoning and future development of lands known as Racecourse South at Leopardstown Racecourse for housing.

I wish to inform you that I have decided to part-grant your request on the 15th of December 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 have divided your request into part A and B to explain my decision.

Part A – Request Part - Granted

In relation to part A of your request where you request *All correspondence from January 1st 2023 to November 1st 2023 between the Land Development Agency and: any official or representative of Horse Racing Ireland* I wish to inform you that I am part-granting this part 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 under Sections 29(1), 36(1) and Section 37(1) of the Freedom of Information Act, 2014. Furthermore, I am refusing a number of records under Section 36 and section 29. These redactions and refusal are detailed in the Schedule of Records in **Appendix 1**.



Certain information within these records is part of an ongoing deliberative process between the LDA and Horse Racing Ireland in relation to the Leopardstown Racecourse lands and as such will form an integral part of any outcome that is yet to be decided upon.

Section 29(1) 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.
- That there is more than just a transitory interest by the public in this information.

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.

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.

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 these 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 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.
- That the LDA is not prevented or impeded from the effective pursuit of its legitimate business.
- That the LDA can conduct its commercial activities with external stakeholders in a confidential manner.
- That external companies are allowed to provide the LDA with confidential information without fear of release.



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 employed outside of the LDA 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 Act.
- 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.

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 a confidential manner by the LDA outweighs the public interest which would be served were the detail released to you.

Part B – Request Refused

In respect of part B of your request where you requested *All correspondence from January 1st 2023 to November 1st 2023 between the Land Development Agency and any official of DLR county council* I wish to inform you that I am refusing this part of your request.

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. One record was identified within the scope of your request. The FOI Act 2014 provides that in certain circumstances, a public body may refuse the release of certain records. As such the record has been refused under Sections 29(1) and 36(1) of the Act. This record is detailed in the Schedule of Records in **Appendix 1**.

This record is part of an ongoing deliberative process between the LDA and Dún Laoghaire–Rathdown County Council in relation to the site and as such will form an integral part of any outcome that is yet to be decided upon. Moreover, I am of the view that the release of this sensitive record 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.

Section 29 of the Act 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 record.

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 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 refusing the release of the record 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.
- That the LDA is not prevented or impeded from the effective pursuit of its legitimate business.
- That the LDA can conduct its commercial activities with external stakeholders in a confidential manner.
- That external companies are allowed to provide the LDA with confidential information without fear of release.

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 record 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.

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 202340**) 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,
Senior Compliance Manager



Appendix 1: Schedule of Records

Requester name:		Request Re:202340			
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision
Part A					
1	RE:_ Follow up from Meeting LDA & HRI 8th Fe 2023 separate reply to email thread below. Extract to avoid duplication.	Commercially sensitive 1/2 paragraph Email Addresses and phone numbers HRI CEO	36 37	Commercially Sensitive Information Personal Information	Part-Grant
2-9	RE:_ Follow up from Meeting LDA & HRI 8th Fe 2023	2.5 paragraphs and one bullet point of deliberations between FOI bodies. notes and action points Names of commercially sensitive file attachments. Commercially sensitive paragraph, parts of agenda agenda 4 partial paragraphs, notes and action points Email Addresses and phone numbers HRI and LDA. Name of 3 rd party	29 36 37	Deliberations of FOI bodies Commercially Sensitive Information Personal Information	Part-Grant
10	joint memo	1 sentence referring to matters under deliberations. Email Addresses and phone numbers HRI and LDA. Personal info (one sentence) of CEO HRI	29 37	Deliberations of FOI bodies Personal Information	Part-Grant
11-15	RE_ Meeting on Housing for All Carrickmines Site - Please confirm availability for meeting 5th October	5 paragraphs and 3 partial paragraphs of deliberations Commercially sensitive information referred 5 items. Email Addresses and phone numbers DLR HRI and LDA. Name of 3 rd parties x2	29 36 37	Deliberations of FOI bodies Commercially Sensitive Information Personal Information	Part-Grant
16-22	RE_ Meeting on Housing for All Carrickmines Site - Please confirm availability for meeting 5th October	2 x 1 and ½ paragraphs of commercially sensitive deliberations. Commercially sensitive information referred to x3. 2 x	29 36 37	Deliberations of FOI bodies Commercially Sensitive Information	Part-Grant



		1 and ½ paragraphs of commercially sensitive deliberations		Personal Information	
		Email Addresses and phone numbers DLR HRI and LDA. Name of 3 rd parties x2			
2 pages	RE_ HRI _ LDA - Meeting tomorrow	Email in its entirety	29 36	Deliberations of FOI bodies Commercially Sensitive Information	Refuse
4 pages	Options for LDA presentation_compressed	Document in its entirety	29 36	Deliberations of FOI bodies Commercially Sensitive Information	Refuse
3 pages	RE_ Draft statement	Email in its entirety	36	Commercially Sensitive Information	Refuse
Part B					
3 pages	RE_ Meeting on Housing for All Carrickmines Site	Email in its entirety commercially sensitive and ongoing deliberations	29 36	Deliberations of FOI bodies Commercially Sensitive Information	Refuse
		Total number of pages			34
		Total number of pages for full release			3
		Total number of pages for partial release			19
		Total number of pages being withheld			12

