

23/02/2024

**Re: Freedom of Information request 202403 – Request Part Granted.**

Dear

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

You requested:

*all records held by the Land Development Agency in relation to the site of the former St Finan's Hospital in Killarney, which were generated between the 26th July 2023 and the date of acknowledgement of this request*

*The request is for records to include – but not limited to: reports, internal and external correspondence, minutes of meetings, notes or memos in relation to discussions or telephone calls.*

I wish to inform you that I have decided to part-grant your request on the 23<sup>rd</sup> of February 2024.

The purpose of this letter is to explain that decision.

**1. Findings, particulars and reasons for decisions to deny access.**

Details of your request were provided to the relevant section within the LDA to identify any records held which were within the scope of your request.

One record was identified as being requested by you and this is attached to this decision letter for your information.

A number of redactions have also been applied to the attached record under Sections 36(1)(b) & 36(1)(c) and 37(1) 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 this record would prejudice the competitive position of the LDA, and in the same manner would also be commercially sensitive to Kerry County Council in regard to the property. 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 outcome of a commercial process undertaken by an FOI body.

I am of the view that the full release of this sensitive record could reasonably be expected to result in a material financial loss to one or both FOI bodies referenced in the record as it could prejudice their competitive positions in the conduct of their respective business.

Furthermore, releasing this information could prejudice any current or future negotiations by the LDA, and / or Kerry County Council.

### ***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 record as detailed in 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.

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.

### **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 involves 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 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 record, I have taken account of the following:

- The public interest is not best served by releasing this record.
- That both of the Organisations can conduct their 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.
- The IT security infrastructure of the LDA.

Having balanced the public interest factors both for and against the release, I have 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.

## **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, 2<sup>nd</sup> 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 the Chief Financial Officer, Land Development Agency, 2<sup>nd</sup> 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 202403**) is included in the payment details.

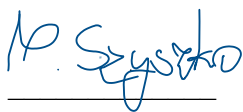
You should make your appeal within 4 weeks of the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the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

Please be advised that the Land Development Agency replies under the Freedom of Information Act 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,

Senior Compliance Manager

## Appendix 1: Schedule of Records

<b>Requester name:</b>		<b>Request Re:202403</b>				
<b>Record 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	Email thread: RE: LDA/KCC two emails in thread	Commercially sensitive information in table and text of email Email address and phone number of LDA personnel, email addresses of Kerry County Council personnel	36  37	Commercially sensitive  Personal Information	Part grant	
					<b>Total number of pages</b>	
					2	
					<b>Total number of pages for full release</b>	
					0	
					<b>Total number of pages for partial release</b>	
					2	
					<b>Total number of pages being withheld</b>	
					0	