



Mr Thomas Kerin

thomaskerin@gmail.com

Re: Freedom of Information request DOJ FOI 2021-0313

Dear Mr Kerin

I refer to your request dated 5 May 2021 made under the Freedom of Information Act 2014, which was received on same date for records held by the Department of Justice. Your request sought:

- *Any documents regarding CBD from 2020 - present*
- *Any internal correspondence regarding CBD from 2020 – present*
- *Dates & agenda of any meetings held in connection with CBD from 2020 - present*

Your request to receive records in connection with your request in electronic format is noted and can be accommodated.

Your request was assigned to 3 different areas within the Department of Justice and the decision makers in each area are detailed below.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. 3 schedules of all of the records covered by your request,
2. An explanation of the relevant findings concerning the records to which access is denied, and
3. A statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

There are 3 schedules enclosed with this letter, which list the documents that the Department of Justice considers relevant to your request. Each schedule describes each document and refers to the sections of the Act which apply to exempt parts of



some of these records. The schedules also refers you to sections of the detailed explanation provided under heading 2 below, which are relevant to the documents in question. Finally, the schedules also provides you with a summary and overview of the decision as a whole.

To assist the FOI requester in navigating the records in connection with this FOI request, each correspondent's correspondence with the Department of Justice and the department's responses to same are grouped as a single record and noted as such on the schedule. This approach enables the requester to follow correspondence issued and received by each correspondent in sequence.

2. Findings, particulars and reasons for decisions to deny access

Schedule 1 : Decision maker : Sinéad Hession, Assistant Principal Officer, Transparency

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. The following exemption provisions in the Act are applicable to parts of some of the records relevant to your request:

Section 29

Section 29 (1) (a) of the Act provides that a body may refuse to grant access to records or parts of records that contain information relating to the deliberative processes of a body. It is considered that a small number of records contain information of this nature and, as such, these records have been partially redacted. It is important to note that section 29 (1) (b) provides the requirement to consider this information within the public interest. As such, a record may be refused if it relates to the deliberative process but only where the granting of such a record would be contrary to the public interest.

In the case of the records associated with this FOI request for which the exemption under section 29 (1) was invoked, information provided from other statutory bodies for the purposes of deliberations and decision-making is deemed to fall within section 29 (1) exemption as it constitutes information arising from consultations. The public interest was carefully considered in accordance with section 29 (1) (b), however the need to preserve confidentiality having regard to the subject matter and the circumstances of the communications resulted in the decision-maker opting to refuse part of the records in question.



Section 31

Section 31(1) provides for the mandatory refusal of an FOI request for records where the material involved would be exempt from production in court because of legal professional privilege. It is noted that this provision comprehends no public interest override. This section of the Act applies to parts of a small number of records and one full record that fall within the scope of this FOI request.

Section 35

Section 35 is a mandatory exemption concerned with the protection of information received in confidence by a public body where there is a reasonable expectation of confidence. Information of a personal nature is contained in several of the records that fall within the scope of this FOI request and information of this nature has been redacted in accordance with section 35 (1) (a), as it is reasonable for correspondents with the Department of Justice, the majority of who are members of the public, to expect that their personal information is retained in confidence. The Department of Justice is also of the view that an obligation of confidence exists on account of the nature of the relationship between the confider and the recipient, that is, members of the general public and a government department. In addition, in many cases, the personal information that has been supplied by correspondents has been provided as a result of its relevance to the purpose of the correspondence and, as such, constitutes the intentional disclosure of sensitive, private information. The Department of Justice considers that the release of such personal information would seriously damage the mutuality of confidence between the department and the general public.

In view of the foregoing factors, this personal information is deemed to satisfy each of the four cumulative elements provided for in Section 35 (1) (a), that is, the information has been received in confidence by the Department of Justice on the understanding that it would be treated as confidential and, in the opinion of the department, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the department that such further similar information should continue to be provided where appropriate.

Section 36

Section 36 (1) (b) provides that a body shall refuse to grant the release of records that contain '*financial, commercial, scientific or technical or other information*'. The decision maker considers that two records held by the Department containing



correspondence from third parties pertaining to commercial information and strategic planning fall within the parameters of this subsection of the Act.

However, under the Act, for records to be deemed exempt from release under section 36 (1) (b), such records must also satisfy a second condition, that is, the records in question must contain *'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 whose disclosure 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'*. The aforementioned records contain financial and operational information and future planning and as such, the decision maker considers that these records possess a commercial value and meet the requirements of section 36 (1) (b).

The decision maker considered whether parts of these records could be released, with partial redaction of information in accordance with section 18 of the Act, however, as the overwhelming majority of the information contained in these two individual pieces of correspondence from third parties comprised of information deemed to be of a commercially sensitive nature, the value to the requester in releasing minor extracts of these records was considered to be minimal; in other words, the redacted versions of these records would no longer convey the general sense and meaning of the original correspondence.

Section 37

Section 37 is a mandatory exemption provision which provides that a body shall refuse to grant the release of personal information in the interests of personal privacy. Section 2 of the Act contains the following definition of personal information:

"personal information" is information about an identifiable individual that

(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 it as confidential...'

Following on from the earlier rationale provided in relation to the application of section 35 of the Act for certain records, many of the records that fall within the



scope of this FOI request contain personal information that is considered to be comprehended by the definition provided for in the Act, for example names of individuals, medical information and family/domestic arrangements. Records that fall within section 37 (1) of the Act have been partially redacted to protect the privacy of individuals, mainly members of the public. However, you will note that this definition and, indeed, section 37, does not extend to records containing personal information relating to public servants acting in their official capacity, such as name and contact details and this information is included in the information released. In addition, section 37 does not extend to personal information relating to the requester, which is contained in both records generated by the requester and in correspondence from the Department of Justice to the requester.

The Department of Justice carefully considered the public interest in disclosure versus withholding the personal information contained in the records that fall within the scope of the FOI request. It is considered that the release of personal information, apart from that related to the requester and public servants acting in an official capacity, would be inappropriate as it amounts to private, sensitive information. It is further considered that the public interest would not be served by releasing such information; on the contrary, the department is of the view that the release of these classes of personal information would be contradictory to the mutuality of confidence argument referred to under section 35 of the Act and discussed earlier in this decision letter.

Schedule 2 : Decision maker: Colin Lavelle, Administrative Officer, Criminal Justice

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. The following exemption provisions in the Act are applicable to parts of some of the records relevant to your request:

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Section 29 (1) (a) of the Act provides that a body may refuse to grant access to records or parts of records that contain information relating to the deliberative processes of a body. It is considered that a small number of records contain information of this nature and, as such, these records have been partially redacted. It is important to note that section 29 (1) (b) provides the requirement to consider this information within the public interest. As such, a record may be refused if it relates to the deliberative process but only where the granting of such a record would be contrary to the public interest.



In the case of the records associated with this FOI request for which the exemption under section 29 (1) was invoked, information provided from other statutory bodies for the purposes of deliberations and decision-making is deemed to fall within section 29 (1) exemption as it constitutes information arising from consultations. The public interest was carefully considered in accordance with section 29 (1) (b), however the need to preserve confidentiality having regard to the subject matter and the circumstances of the communications resulted in the decision-maker opting to refuse part of the records in question.

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In view of the foregoing factors, this personal information is deemed to satisfy each of the four cumulative elements provided for in Section 35 (1) (a), that is, the information has been received in confidence by the Department of Justice on the understanding that it would be treated as confidential and, in the opinion of the



department, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the department that such further similar information should continue to be provided where appropriate.

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Section 36 (1) (b) provides that a body shall refuse to grant the release of records that contain '*financial, commercial, scientific or technical or other information*'. The decision maker considers that two records held by the Department containing correspondence from third parties pertaining to commercial information and strategic planning fall within the parameters of this subsection of the Act.

However, under the Act, for records to be deemed exempt from release under section 36 (1) (b), such records must also satisfy a second condition, that is, the records in question must contain '*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 whose disclosure 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*'. The aforementioned records contain financial and operational information and future planning and as such, the decision maker considers that these records possess a commercial value and meet the requirements of section 36 (1) (b).

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Schedule 3 : Decision maker : Peter White, Assistant Principal officer, Legal Unit

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the release of these classes of personal information would be contradictory to the mutuality of confidence argument referred to under section 35 of the Act and discussed earlier in this decision letter.

3. Rights of appeal

In the event that you are not happy with this decision you may seek a review of this decision by writing to the Freedom of Information Unit, foi@justice.ie seeking an internal review of the matter and referring to or enclosing a copy of this letter.

You should submit this within 4 weeks from the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. The making of a late appeal may be permitted in appropriate circumstances. The review will involve a complete reconsideration of the matter by a more senior member of the staff of this body and the decision will be communicated to you within 3 weeks.

Yours sincerely,

Louise Keane

Louise Keane
Freedom of Information Co-Ordination Officer

12 July 2021