

Mr Pádraig Grant
Joint Committee on Housing, Planning
And Local Government
Leinster House
Dublin 2

Your Ref: HPLG –i-1114

11 October 2019

Dear Mr Grant,

I would like to thank the Joint Committee for affording me an opportunity to outline my views on the proposal to exclude the Land Development Agency (the Agency) from the provisions of the Freedom of Information Act 2014 (the FOI Act).

I should say at the outset that I generally take the view that a strong case can be made for the full application of the Act to all public bodies. It has been my experience to date that the exemptions contained in the FOI Act are sufficiently robust to ensure the protection of records whose release would be likely to give rise to any of the harms the exemptions seek to protect.

Nevertheless, I accept that the Oireachtas has previously deemed it appropriate to include certain bodies in part only having regard to the nature of their functions. I note, for example that the scope of the Act is quite limited in respect of certain bodies operating in a commercial sphere such as the National Treasury Management Agency, the National Asset Management Agency, the National Pensions Reserve Fund Commission, and the National Development Finance Agency.

Assuming that similar considerations arise in respect of the Land Development Agency, I see no reason why it cannot be included within the scope of the Act in part at least, as are other such similar bodies. Indeed, it seems entirely appropriate, in my view, that the Agency would, at a minimum, be subject to the provisions of the Act in respect of records relating to its general administration, as are many other Offices, including mine.

I would also point out that the proposal to include a provision in the establishing legislation to exclude the Agency from the provisions of the FOI Act is not in keeping with the other relevant provisions of the Act that provide for the inclusion of all newly formed public bodies within 6 months of becoming such a body unless a specific order is made under the Act for their exclusion, either in whole or in part (section 6(12) refers).

In the circumstances, I would suggest that it would be more appropriate to remove Head 39 from the Land Development Agency Bill 2019 and for the Minister for Public Expenditure and Reform to make an order under section 6(5)(a) of the FOI Act to provide for the limited inclusion of the Agency as a public body for the purposes of the Act.

I trust this information will be of assistance to the Joint Committee in its deliberations on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Tyndall', written in a cursive style.

Peter Tyndall
Information Commissioner