



22<sup>nd</sup> July 2021



Email: 

Re: FOI request IE\_FOI\_491

Dear ,

I refer to your request dated 25th June 2021 made under the Freedom of Information Act 2014, which was received on by my office on that date, for records held by Iarnród Éireann.

**Request:**

RECORDS RELATING TO IARNRÓD ÉIREANN'S TENDER FOR A SINGLE SUPPLIER FRAMEWORK AGREEMENT FOR THE DESIGN, BUILD, MANUFACTURE, SUPPLY, DELIVERY, TESTING AND COMMISSIONING OF NEW COMMUTER VEHICLES REQUIRED FOR THE EXPANSION OF THE DART NETWORK (I.E. CONTRACT REFERENCE NO. 7237 AND OJEU REFERENCE 2019/S 102-248433)

- 1. COPIES OF THE FOLLOWING DOCUMENTS SUBMITTED BY THE SUCCESSFUL TENDERER:
  - a. TRD13
  - b. TRD14
  - c. TRD28
  - d. TRD54
  - e. TRD57
  - f. TRD60
  - g. TRD69
  - h. TRD74
  - i. TRD75
  - j. TRD86
  - k. TRD87
  - l. TRD91
  - m. TRD92
  - n. TRD93
  - o. TRD106
  - p. TRD109
  - q. TRD112
  - r. TRD119
  - s. TRD123
  - t. TRD125
  
- 2. ALL NOTES AND DOCUMENTS PRODUCED IN RELATION TO THE EVALUATION OF EACH OF THE TRDS LISTED UNDER 1 ABOVE

For the purposes of this letter, the documents referred to in paragraph 1 of this letter are defined as “the TRDs” and the documents referred to in paragraph 2 of this letter are defined as “the Tender Evaluation Documents”.

I, [REDACTED], Decision Maker, have now made a final decision to refuse your request on the 25<sup>th</sup> June 2021.

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

- A. a schedule of the records covered by your request;
- B. an explanation of the relevant findings concerning the records to which access is denied, and
- C. 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.

**A. Schedule of records**

A schedule is attached to this letter and it shows the documents that Iarnród Éireann - Irish Rail considers relevant to your request. It describes each document and refers to the sections of the FOI Act which apply to prevent release. The schedule also refers you to sections of the detailed explanation given under heading B below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

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

The sections of the FOI Act which can apply to deny access to documents are known as its exemption provisions. I have considered Section 30(1)(c), Section 35(1)(b) and Section 36(1)(b) and (c) as follows.

**Section 30 - Functions and negotiations of FOI bodies**

Section 30(1) of the FOI Act provides, inter alia, as follows:

- “(1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to -

.....

- (c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or an FOI body.”

With regard to the TRD Documents and the Tender Evaluation Documents, the information which I am considering under this exemption discloses positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of negotiations carried on by or on behalf of Iarnród Éireann in the context of an ongoing tender process.

In my opinion, the release of this information at this stage in the process would be contrary to the public interest as the tender process, including negotiations thereunder, is ongoing. I consider that access to the records would be harmful to the process and it is my opinion that this information should not be released. I have set out below the factors that I have considered in the public interest.

### ***Public Interest Test***

I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- The right of the public to have access to information
- The accountability of administrators and scrutiny of tender processes

In considering the public interest factors which favour withholding the records, I have taken account of the following:

- The need to preserve the confidentiality of positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on in respect of a tender process
- The release of records would be harmful to the tender process, including negotiations thereunder
- The release of records would impair future tenders
- Premature release could contaminate the tender process

- Premature release of records would impair the integrity of the tender process to a significant or substantial degree without countervailing benefit to the public.

Having balanced the foregoing factors, I place greater weight on the public interest favouring the withholding of the records and, therefore, my decision is to refuse access to the TRD Documents and the Tender Evaluation Documents.

### **Section 35 - Information obtained in confidence**

Section 35(1) of the FOI Act provides, inter alia, as follows:

“(1) Subject to this section, a head shall refuse to grant an FOI request if -

.....

- (b) disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) in *Part 1* or *2* of **Schedule 3** of an enactment specified in that Schedule) or otherwise by law.”

With regard to the TRD Documents and the Tender Evaluation Documents, the confidentiality of the Invitation to Negotiate is provided for in, inter alia, Condition 5.5 of the Conditions of Tendering and the confidentiality of the evaluation is provided for in Condition 11.1 of the Conditions of Tendering.

I consider that disclosure of the TRD Documents and/or the Tender Evaluation Documents, would constitute a breach of a duty of confidence provided for in the Conditions of Tendering.

### ***Public Interest Test***

Section 35(1)(b) of the FOI Act does not provide for the application of the public interest test.

My decision is to refuse access to the TRD Documents and the Tender Evaluation Documents.

## **Section 36 - Commercially sensitive information**

Section 36(1) of the FOI Act provides, inter alia, as follows:

“(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.

With regard to the TRD Documents and the Tender Evaluation Documents, the information which I am considering under this exemption contains (a) financial, commercial, technical and/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, and/or (b) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

In my opinion, the release of this information would be contrary to the public interest as the disclosure could (a) 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 that person’s business and (b) could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates. The foregoing applies in the context of the current tender process, including (contractual) negotiations thereunder, which is ongoing, and also to future tender processes, the conduct, outcome and/or competitive nature of which could be distorted by the disclosure of the information in question.

I consider that disclosure of the records would be prejudicial within the meaning of Section 36(1)(b) and Section 36(1)(c) and it is my opinion that this information should not be released.

I have set out below the factors that I have considered in the public interest.

### ***Public Interest Test***

I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- The right of the public to have access to information
- The accountability of administrators and scrutiny of this tender processes

In considering the public interest factors which favour withholding the records, I have taken account of the following:

- The need to protect commercially sensitive information provided during a tender process
- The release of records could reasonably be expected to result in a material financial loss or gain or prejudice within the meaning of Section 36(1)(b) and/or Section 36(1)(c)
- The release of records would impair future tenders
- Premature release could contaminate the tender process
- Premature release of records would impair the integrity of the tender process to a significant or substantial degree without countervailing benefit to the public

Having balanced the foregoing factors, I place greater weight on the public interest favouring the withholding of the records and, therefore, my decision is to refuse access to the TRD Documents and the Tender Evaluation Documents.

### **C. Right of appeal**

If you are unhappy with this decision you may appeal it. In the event that you wish to make such an appeal, you can do so by writing to the FOI Unit, Corporate Communications, Iarnród Éireann - Irish Rail, Connolly Station, Amiens Street, Dublin 1 or by email to [FOI@irishrail.ie](mailto:FOI@irishrail.ie). Your correspondence should include a fee of €30 for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to Iarnród Éireann if you wish to make payment by electronic means please contact Ms. Sue Stanley([sue.stanley@irishrail.ie](mailto:sue.stanley@irishrail.ie)). You should make your appeal within 20 working days from the date of this notification. 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 Iarnród Éireann-Irish Rail.

### **D. Publication**

All non-personal FOI requests, will be recorded on an FOI disclosure log which will be published on the Iarnród Éireann - Irish Rail website in due course.

Should you wish to discuss the above, please contact the FOI Officer at [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]  
Decision Maker  
Procurement,  
Iarnród Éireann

Schedule of Records for IE\_FOI\_491: Summary for Decision Making

Record No.	Date of Record	Brief Description	No. of Pages	Decision: Grant/Part Grant/Refuse	Section of Act if applicable	Record Edited/Identify Deletions
1	07/08/2020	IE-TRD13-[4.2.1] Energy Efficiency	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
2	07/08/2020	IE-TRD14-[4.2.9] Energy Efficiency	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
3	07/08/2020	IE-TRD28-[5.8] Electrical Interface and Train Performance Details	20	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
4	07/08/2020	IE-TRD54-[6.10] Traction Power	10	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
5	07/08/2020	IE-TRD57-[6.13.2] Regenerative Braking_v2	5	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
6	07/08/2020	IE-TRD60-[6.15,6.15.1-6.15.2] Wheel Flange Lubrication System	8	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
7	07/08/2020	IE-TRD69-6.23.11 Traction Batteries	10	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
8	07/08/2020	IE-TRD74-[7.1.1] Accessibility	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
9	07/08/2020	IE-TRD75-[7.1.2] Accessibility	5	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document



10	07/08/2020	IE-TRD86-[7.2.4] Noise and Vibration	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
11	07/08/2020	IE-TRD87-[7.2.5] Noise and Vibration	1	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
12	07/08/2020	IE-TRD91-[7.3.5] Passenger Accommodation	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
13	07/08/2020	IE-TRD92-[7.3.6] Passenger Accommodation	5	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
14	07/08/2020	IE-TRD93-[7.4] Seats and Capacity	15	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
15	07/08/2020	IE-TRD106-[7.8] Floor Coverings	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
16	07/08/2020	IE-TRD109-[7.11] Climate Control	12	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
17	07/08/2020	IE-TRD112-[7.14,7.14.1-7.14.2] Exterior	10	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
18	07/08/2020	IE-TRD119-[7.15.1] Exterior Windows	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
19	07/08/2020	IE-TRD123-[7.17] External Passenger Doors and Doorways_v2	10	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document

20	07/08/2020	IE-TRD125-[7.17.6] External Passenger Doors and Doorways_v2	2	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
21	08/10/2020	4.1 - Group Submission Report - Final	15	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
22	22/10/2020	4.3 - Group Submission Report - Final	39	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
23	14/10/2020	4.7 - Group Submission Report - Final	34	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document
24	10/03/2021	7237_Evaluation_Report_Final_10_03_2021_v1.1	290	Refuse	Section 36 (1) B Section 36 (1) C Section 30(1)(c) Section 35(1)(b)	Complete Document

Signed.....

Date .....