

An Roinn Cumarsáide,
Fuinnimh agus Acmhainní Náúrtha
Baile Átha Cliath 2.

Department of Communications,
Energy and Natural Resources,
Dublin 2.

COPY

Our Ref: FOI/2008/39

24 July 2008

Mr Thomas Newman
Cornaher
Kilbeggan
Co Westmeath

Dear Mr Newman

I refer to your request seeking an internal review of the decision conveyed to you on 24 June 2008 on your application for access to records in relation to the Biofuels MOT Relief Scheme II.

I am a more senior member of the staff of this Department than was the person making the first decision. I have reviewed your request for access to records relating to the Biofuels Mineral Oil Tax Relief Scheme II.

With regard to your assertion that this Department is protecting the sixteen successful applicants under the Scheme from assessment, I can assure you that this Department is monitoring the projects on an ongoing basis. I would point out that all of the successful applicants provide six monthly reports in a format requested by this Department. In addition to this officials from the Department are in communication on an ongoing basis with successful applicants and have carried out some site visits.

It is my view that correspondence and reports forwarded to this Department by the successful applicants should not be released to a third party. Section 27(1)(a)(b)(c) relates to information which if released could prejudice the competitive position of the applicants in the conduct of their business or could prejudice the outcome of contractual or other negotiations of the applicants. Therefore it is considered that there is no benefit to the public interest by granting access to these records.

In view of the issues outlined above I have decided to uphold the original decision made by Ms Geraldine Luddy.

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2.

If you wish to appeal this decision you must usually do so not later than 6 months after receiving this letter. Should you write to the Information Commissioner, making an appeal, please refer to this letter.

If you make an appeal, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

Please note that an application fee must accompany all appeals made to the Office of the Information Commissioner regarding FOI requests for non-personal records, and your appeal to them cannot be processed until the fee has been submitted. The application fee is currently €150 and a reduced fee of €75 will apply if you are covered by a Medical Card.

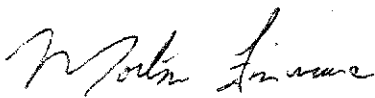
If claiming a reduced application fee, the request must also be accompanied by

- The Medical Card registration number
- The name of the issuing Health Board
- Your consent to the verification of these details with that Health Board.

Payment should be made by way of bank draft, money postal order, or personal cheque made payable to "The Office of the Information Commissioner"

On receipt of the fee, an acknowledgement letter will be sent to you outlining details of when you can expect a decision on your request, and the contact details of the person handling the application.

Yours sincerely



Martin Finucane
Principal Officer



16th July, 2008

Mr. Thomas Newman,
Cornaher,
Kilbeggan,
Co Westmeath.

FOI/0039/2008

Dear Mr. Newman,

I refer to the appeal you have made under the Freedom of Information Act on the decision taken regarding your recent FOI request concerning the Biofuels Scheme 2.

Your appeal was received in the FOI Unit on the 30th June, 2008 along with the associated fee. A decision on your appeal will be made within three weeks of receipt of your request. This means that you can expect to receive the outcome of your appeal by the 21st July, 2008.

A full and new examination of the matter will now be carried out by Mr. Martin Finucane, Department of Communications, Energy & Natural Resources, Renewable & Sustainable Energy Division, 29 – 31 Adelaide Rd., Dublin 2. He can be contacted at 01 6783201.

If you are not satisfied with the outcome of the appeal, you are entitled to apply for a further review by the Office of the Information Commissioner, 18 Lr. Leeson St., Dublin 2 within six months of receiving notice of decision on the appeal. Please note the FOI charges will apply if you wish to bring your case to the Office of the Information Commissioner.

Please note that an application fee for an appeal to the Commissioner is currently €150.00 and a reduced fee of €75.00 applies if you are covered by a Medical Card.

If claiming a reduced application fee, the request must also be accompanied by

- The Medical Card registration number
- The name of the issuing Health Board
- Your consent to the verification of these details with that Health Board.

Payment should be made by way of bank draft, money postal order, or personal cheque made payable to "The Office of the Information Commissioner".

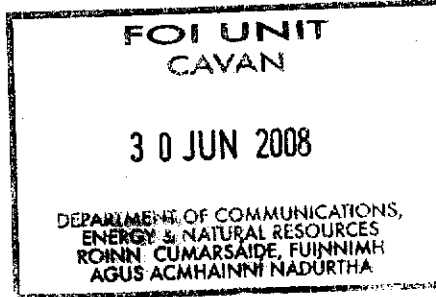
Yours sincerely,

Mary Rabbitte
FOI Unit
PH: 01 6782903

51/39/2008.

Thomas Newman
Cornaher,
Kilbeggan,
Co. Westmeath.

Freedom of Information Unit
Elm house
Cavan
Co. Cavan



Dear Mr Frank O'Brien,

It is disappointing to be denied access to the requested information based below on "commercially sensitive grounds" since the excise relief foregone by the 16 successful applicants to biofuel scheme 2 is state aid and is in the public interest to be accessible. In addition to this, it is only reasonable that this information be released so that a comparison may be drawn between companies granted state aide and those excluded from biofuel scheme 2. By refusing this information the dept of the Marine is effectively protecting the 16 companies from assessment and hence denying the possibility of competition and furthermore denying scrutiny of the Biofuel Scheme 2 which is costing the state approx 200 million euro. Therefore, under the freedom of information act, and under the application to biofuels scheme 2 of December 2006 I am appealing the response given to the following information request.

1
Documents relating to the six monthly reviews of each of the 16 companies that received the excise rebate. I.e. volumes produced and/or volumes imported.

2
I want to ask the minister if:
"In the case of any material breach of these terms and conditions any such offer of Mineral Oil Tax Relief on a Biofuels Project may, at the sole discretion of the Minister for Finance, be withdrawn and the Minister for CMNR may award the relief in accordance with paragraph 6.5."
Has this happened and if so any documents relating to the individuals projects that has breached these "terms and conditions".

3
Are any of the 16 companies awarded excise relief in these circumstances that have arisen "whereby an applicant will be unable to meet a time deadline due to circumstances beyond their control, or that of its servants or agents, including compliance with the requirements under paragraph 6.2 and 6.3 above, and if an extension to the time deadline is required, then the applicant shall give prior written notification to DCMNR setting out the reasons and the extended period which the applicant requires to meet the relevant obligation. The Minister for Finance on the advice of the Minister for CMNR may in his sole discretion extend the deadline, if satisfied that:

- (a) The circumstances complained of have occurred;
- (b) The circumstances complained of do not arise due to the fault of neglect of the applicant, its servants or agents;

- (c) The time extension sought is reasonable and realistic; and
- (d) The obligation referred to can be reasonably shown to be achievable by the requested extended date.”

And if so I am looking for the documents/letters of the companies that have given “prior written notification to DCMNR setting out the reasons and the extended period which the applicant requires to meet the relevant obligation”

And if this has happened, then the companies ”time extension” (c)/(d) above must be close or surpassed the “achievable” and “requested extended date” due to the fact that there is only now two years left on the scheme.

Also if this has happened, (point (b) above) then the companies whose “servants or agents” are at fault for not producing the fuel (or not been able to produce the fuel) and are now importing (or planning to import the biofuel) are in breach of the scheme.

4

There is schedule for each of the 16 companies that that were award excise relief as set out below in the guidance notes, have each of the 16 companies adhered to it and I am requesting documents for each of the 16 companies relating to the schedule.

The quantities, which have been approved for your project, are set out in the following schedule.

Biofuel complying with EU diesel standard EN590 / PPO/ Bioethanol, Biofuel for captive fleets (one of these categories will be inserted)	Production in litres ‘000	Excise Relief level (where cumulation of state aids above 40% has been identified partial excise relief may be granted)
2006		
2007		
2008		
2009		
2010		
TOTAL		

This MOT relief on biofuels is subject to your compliance in full with the terms and conditions of the scheme as set out in this Letter of Agreement and the competition Guidance Notes. In the case of any breach of these terms and conditions MOT relief on your biofuels project may, at the sole discretion of the Minister for Finance, be immediately withdrawn in whole or in part.

Hopefully you can help me on the above matter as soon as possible.
 Yours Sincerely,
 Thomas Newman