



Our Ref: FOI/0022/2007

24 April 2007

Mr Fergal Brennan
BCM Hanby Solicitors
88 Harcourt Street
Dublin 2

Dear Mr Brennan

I refer to your request seeking an internal review of the decision conveyed to you on 8 March 2007 on your application for access to a copy of the application submitted by Irish Food Processors Ltd under the category biofuel blends complying with EU Diesel Standard EN590 in the Biofuels Mineral Oil Tax 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 the records concerned and I have decided to uphold the original decision made by Ms Geraldine Luddy.

All relevant sections of the FOI Acts have been taken into consideration when making a determination in this case. The refusal to grant your request is based on Section 27(1)(a)(b)(c). The information provided by the applicant includes information on technical details of the project, feedstock suppliers, planning details, financial details and information relating to the business dealings of the company, all of which is considered commercially sensitive. In the Guidance Note for Applicants on Application Procedure which was made available under the scheme all applicants were advised of the possibility of disclosure of information under the FOI Acts. (a copy is attached for ease of reference -page 17 refers). Irish Food Processors Ltd in the application they submitted indicated to this Department that they did not want any of the information provided by them in their application released under FOI as did the majority of the other applicants.

The public interest factor in releasing the application provided by Irish Food Processors Ltd has been taken into consideration as required under FOI in making the determination in this case not to release any information.

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

If you wish to appeal, 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 €50 will apply if you are covered by a Medical Card.

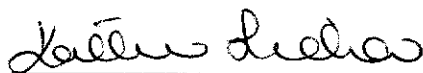
If claiming a reduced application fee, the request must also be accompanied by

- 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



Katherine Licken
Assistant Principal Officer



5th April, 2007

Mr. Fergal Brennan,
BCM Hanby Wallace Sols.,
88 Harcourt St.,
Dublin 2.

FOI/0022/2007

Dear Mr. Brennan,

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 Mineral Oil Tax Relief Scheme 2..

Your appeal was received in the FOI Unit on the 3rd April, 2007 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 26th April, 2007.

A full and new examination of the matter will now be carried out by Ms Katherine Licken, Renewable & Sustainable Energy Division, Department of Communications, Marine & Natural Resources, 29 – 31 Adelaide Rd., Dublin 2. She can be contacted at 01 6783204.

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 €50.00 applies if you are covered by a Medical Card.

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

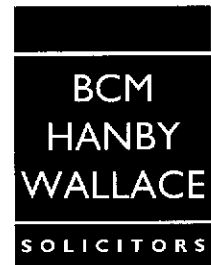
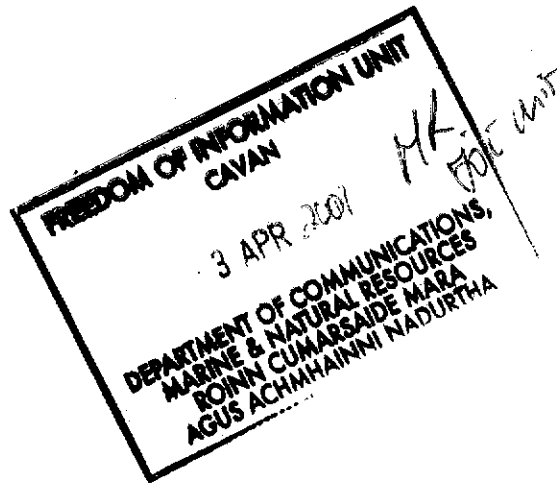
- The Medical Card registration number
- The name of the issuing Health Board
- Your consent to the verification of these details with that Health Board.

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

88 Harcourt Street, Dublin 2
Tel: (353-1) 418 6900
Fax: (353-1) 418 6901
E-Mail: info@bcmhw.com
www.bcmhw.com
Dx: 18 Dublin



Mr Frank O'Brien
Freedom of Information Unit
Department of Communications,
Marine and Natural Resources
Elm House
Earlsvale Road
Cavan

Date: 2 April 2007

Our Ref: FB/MNL/

Your Ref: FOI/0022/2007

Dear Mr O'Brien

Appeal

I enclose a copy of a request which I made under the Freedom of Information Acts 1997-2003 dated 20 February 2007 for a copy of the application submitted by Irish Food Processor Limited under the category biofuels blends complying EU diesel standard EN590 in the Biofuels Mineral Oil Tax Relief Scheme 2.

I include a copy of the final decision made by Geraldine Luddy, Sustainable and Renewable Division, dated 8 March 2007 refusing my request on the grounds of the information is held by the relevant project to be commercially sensitive. I now appeal this decision and enclose a cheque in the amount of €75.00 in respect of the charge for this appeal.

In refusing the appeal the decision maker has referred to Section 27 (1), Section 27 (1) (b), and Section 27 (1) (c).

I consider that the decision maker has not properly considered Section 27.

The letter states that the schedule of relevant records provides brief reasons for the decision, which are meant to supplement the fuller and more detailed explanation given under heading 2 in the decision makers letter. I do not consider that the reasons set out in facts supplement the explanation in any way.

Section 27 (1)

I submit that the record involved does not fall within Section 27(1) as it is not in fact a trade secret, could not reasonably be expected to result a material loss, could not prejudice the competitive position of the company involved and could not prejudice the conduct or outcome of contractual or other negotiations of the company. The competitive position of the company has benefited from its successful application to which the record the subject of this appeal relates.

The decision maker has considered Section 27 (1) only of the Act, but has not in fact properly carried out her function in accordance with Section 27. Section 27 (1) expressly states that it is subject to

sub-section (2).

Section 27(2)

Sub-section (2) sets out circumstances in which a head shall grant a request under Section 7 to which subsection (1) relates. It is evident from the decision maker's letter that she has not considered her obligations in that regard. In particular, Section 27 (2) (8) provides that the head shall grant the request if the person to whom the record concerned relates consent in writing to access to the records being granted to the request concerned. There is no suggestion in the decision maker's letter that the person to whom the record concerned relates has been asked to consent or has refused consent. The decision maker has not complied with her obligation to make that inquiry.

Section 27 (2) (d) provides that head shall grant a request under Section 7 if information contained in the record was given to the public body concerned by the person to whom it relates and the person was informed on behalf of the body, before being so given, that the information belongs to a class of information that would or might be made available to the general public.

The decision maker states that the information was provided by the applicant in a response to a call for proposal process. It is therefore clear that Section 27 (2) (d) applies, in that information contained in the record was given to the public body concerned by the person to whom it relates.

The decision maker has not addressed the question of whether or not the person was informed on behalf of the body, before the information being given, that the information belongs to a class of information that would or might be made available to the general public. The decision maker has therefore not complied with her obligation under Section 27 (2) (d).

Section 27 (3)

Section 27 (3) is not expressly adverted to in the decision makers letter. This sub section provides that subject to section 29, sub section (1) does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would on balance, be better served by granting than by refusing to grant the request under Section 7 concerned. The decision maker has stated that there is no benefit to the public interest by granting access to the records. I do not consider that the decision maker has complied with her obligations as she has not balanced the public interest factors in favour of release as against the public interest factors against release. I submit that this should be done and that, if this were done, the public interest would favour release.

Section 29

The decision maker does not appear to have complied with her Section 29 obligations. Which set out the procedure to be adopted in relation to requests to which Section 27 applies. I do not accept that Section 27 applies but as the decision was based on Section 27 applying, Section 29 had to be complied with and appeared that it did not.

I look forward to receiving a decision on this appeal as soon as possible. If you require any further information from me for the purpose of determining the appeal, please contact me.

Yours sincerely



Feargal Brennan

enc. (2)



8 March 2007

Our Reference Number: FOI/0022/2007

Mr Fergal Brennan
BCM Hanby Wallace Solicitors
88 Harcourt Street
Dublin 2

Dear Mr Brennan

I refer to the request which you made under the Freedom of Information Acts 1997 - 2003 for a copy of the application submitted by Irish Food Processors Ltd under the category biofuel blends complying with EU Diesel Standard EN590 in the Biofuels Mineral Oil Tax Relief Scheme II.

I have made a final decision to refuse your request on the grounds that the information is held by the relevant project to be commercially sensitive. If you have any queries regarding this correspondence you can contact me by telephone at 01-6783215.

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

1. a schedule 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

A schedule of relevant records is attached to this letter. It shows the documents that this Department considers relevant to your request. It describes each document and where appropriate refers to the sections of the FOI Act which apply to prevent release.

The schedule also provides brief reasons for the decision which are meant to supplement the fuller and more detailed explanation given under heading 2 below.

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

The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

The record involved is the application form and associated documentation submitted by the company in question. The information provided in the application is considered by the project promoter as commercially sensitive as it contains business details,

technical description of the project, processes involved, plant facilities and details of where feedstock supply will be sourced. The application also contains details of the individuals involved in the project team.

The information in the application was provided by the applicant in response to a call for proposals process and it is considered that its disclosure could prejudice the competitive position of the company involved.

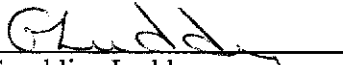
The relevant sections of the FOI Act are as follows:

Section 27(1)(a)(b)(c) relates to information which is considered commercially sensitive as it relates to the business, financial and technical details of the proposal by the company involved and details of where feedstock supply will be sourced to develop biofuels which is considered trade secret. The release of this information could prejudice the outcome of contractual or other negotiations of the applicant. Therefore it is considered that there is no benefit to the public interest by granting access to these records.

3. Rights of appeal

The Freedom of Information Act provides the right to appeal a decision taken under the Act within 4 weeks of the initial decision. Should you wish to make such an appeal, you can do so by writing to Mr Frank O'Brien, Freedom of Information Unit, Department of Communications, Marine and Natural Resources, Elm House, Earlsvale Rd, Cavan. Please note that there is a charge for all appeals of FOI requests which is currently €75 or €25 for medical card holders. The appeal will involve a complete reconsideration of the matter by a more senior member of staff of this Department.

Yours sincerely



Geraldine Luddy
Sustainable and Renewable Division

Requesting copy of Application submitted by Irish Food Processors Ltd in the EN590 category of the Biofuels MOT Relief Scheme II

Record Number	Brief Description and Date of Record	File Ref.	No. of Pages	Relevant Facts	Findings/ conclusions	Grant/refuse/ part-grant	Basis of Refusal: Section of Act	Record edited/ Identify deletions
1	Cover letter from Irish Food Processors dated 28 August 2006 enclosing the Application Form and other additional documentation appended to the application form from Agri-Energy Ltd (Irish Food Processors) relating to their proposal for mineral oil tax relief under the Biofuels Mineral Oil Tax Relief Scheme II in the EN590 category as advertised by the Department of Communications, Marine and Natural Resources.	BF 5/51	3 pages 491 pages	Cover Letter submitted by Irish Food Processors to DC/MNR with application form. Application Form and associated appendices.	Relates to business, financial and technical details of the applicant and contains personal information on other parties involved with the proposal and information which is regarded as trade secret.	Refuse	Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	



Department of Communications, Marine and Natural Resources
Roinn Cumarsáide, Mara agus Acmhainní Náúúrtha

21st February, 2007

Mr Feargal Brennan,
BCM Hanby Wallace Solicitors,
88 Harcourt St.,
Dublin 2.

FOI/0022/2007

Dear Mr Brennan,

I refer to the Freedom of Information request received in this office on 21st February, 2007 along with the associated fee.

The officer handling your request will be Ms Geraldine Luddy, Renewable and Sustainable Energy Division, Department of Communications, Marine & Natural Resources, 29-31 Adelaide Rd., Dublin 2. She can be contacted at 01 6783215.

A final decision on your request will normally be sent to you within 4 weeks of receipt of your request. This means that you can expect to receive your decision by the 22nd March, 2007.

If you have not heard from us when the time allocated has expired, you are automatically entitled to appeal to the Department for a review of the matter. This review proceeds on the legal basis that the initial request is considered refused once the specified time for responding to it has expired.

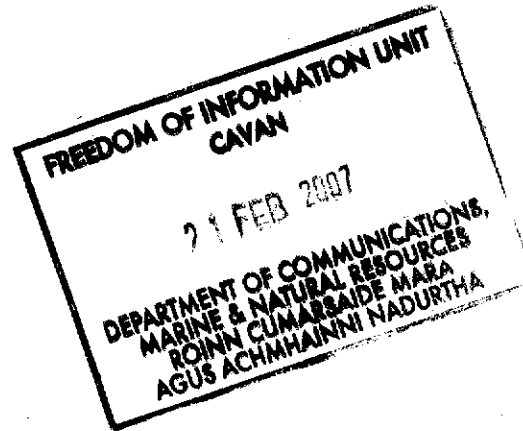
You should also be aware that you are entitled to a review of the decision if your request is refused, or if you are for any reason dissatisfied with the outcome of your request. The review is a full and new examination of the matter carried out by a more senior member of staff of this Department. In the event that you need to make an appeal, you can do so by writing to Mr. Frank O'Brien, FOI Unit, Department of Communications, Marine & Natural Resources, Elm House, Earlsvale Road, Cavan. Please note that there is a charge for all appeals of FOI requests. This charge is currently €75.00. A reduced fee of €25.00 applies if you are the holder of a Medical Card.

Please note that the Department of Communications, Marine & Natural Resources has a policy of posting a summary of your request, your name and address and the subsequent reply on the Department's website for reference purposes.

Yours sincerely,

Mary Rabbitte
FOI Unit
PH: 01 6782903

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Mary Rabbitte,
Freedom of Information Unit,
DCMNR,
Elm House,
Earlesvale Road,
Cavan
BY REGISTERED POST

Date: 20 February 2007

Our Ref: 23257.2FB/NS


Dear Ms Rabbitte,

Under the Freedom of Information Act, BCM Hanby Wallace would like to apply for a copy of the following document:

Application of Irish Food Processors Ltd for the EN590 category of the Biofuels Scheme II (successful, awarded 97m litres).

Please find enclosed a cheque for €15 for processing this application.

Yours sincerely,


Feargal Brennan
BCM Hanby Wallace

Encl.