



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

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

3, April 2008

Mr Sean Boner
Sean Boner and Company
Quay Road,
Dungloe,
Co. Donegal

Dear Mr Boner

Re: Request Reference FOI/2009/6

I refer to your appeal in respect of the above FOI request seeking all documents relied on by this Department when deciding to enact Bye Law 822 of 2007 and Bye Law 836 of 2008 which was received on 16 March 2009.

I am a more senior member of Staff of this Department than the person who made the decision of 6 March 2009. This decision on review is an entirely new and separate decision on your request. In carrying out this review I have paid particular attention to the points raised in your letter dated 13 March 2009.

It is considered that on the basis of the wording of your original request, it would not have been possible for the official dealing with it to have envisaged or intuited the number of issues which it now appears you believe that wording had conveyed.

Notwithstanding that consideration and having carefully reviewed the degree to which the Department has relied on documents in its possession in deciding to enact the above mentioned Bye Laws, I concur with the view that the key information which underpins the annual introduction of wild salmon management measures is derived from and contained in the advice provided by the Standing Scientific Committee (SSC) of the National Salmon Commission (NSC).

The SSC reports for 2006, 2007 and 2008 are now posted on the Department's website as are the other annual legal instruments relating to wild salmon management:

1. Wild Salmon and Sea Trout Tagging Regulations and
2. The Control of Fishing for Salmon Order.

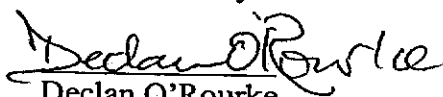
I can confirm that the Bye Laws to which your request relates were seen and approved by the Parliamentary Counsel.

As regards the matter of a complaint to the European Commission and correspondence relating to that complaint, such documents are exempt from disclosure in accordance with Section 24 (2) (e) of the Act. However, certain documents arising from this matter may be available on request from the Environment Directorate of the European Commission, Avenue de Beaulieu 5, 1160 Brussels.

Right of Appeal

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. The fee is €150 for such appeals other than appeals against a decision to impose a fee. If you wish to appeal, you must usually do so no later than 6 months from the date of this notification. Should you write to the Information Commissioner making an appeal, please refer to this letter.

Yours sincerely



Declan O'Rourke
Assistant Principal
Petroleum Affairs Division

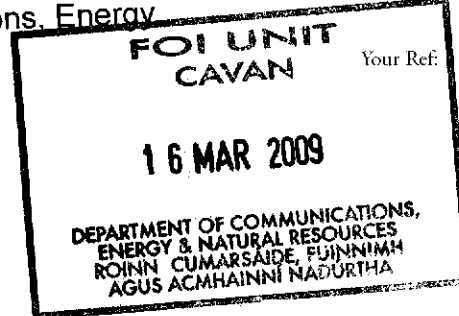
SEÁN BONER & COMPANY
SOLICITORS

Quay Road, Dungloe, Co. Donegal.
Tel: 074 9522762 or 074 9522756
Fax: 074 9522763
Email: info@seanboner.ie
DX 156007 Dungloe

Freedom of Information Unit,
Department of Communications, Energy
and Natural Resources,
Elm House,
Earlsvale Road,
Cavan,
Co. Cavan.

Our Ref:

SB/MMC/X792



Your Ref:

13 March 2009

RE: REQUEST REFERENCE FOI/2009/6

Dear Sirs,

We received a reply to our Freedom of Information request of the above reference from Kathleen Regan, copy of which we enclose. We do not consider this reply to comply with our request.

We act for 20 salmon driftnet fishermen who have been prohibited from fishing for salmon as a result of a byelaw passed by the Department.

What we had expected to receive was copies of all internal documents prepared in the years lead up to the closing of the salmon fishery. Over a number of years, changes were brought about that had the effect of restricting the fishing effort in relation to the driftnet salmon fishery. This documentation might indicate the attitude of the Department to the driftnet salmon fishery prior to the intervention of the European Commission.

A complaint from an angling trust in South West England (with supporting organisations following up on the original complaint) had triggered the involvement of the European Commission. The European Commission as we understand it asked Ireland to take steps to ensure compliance with the Habitat Directive, in particular in relation to the effect the Irish salmon fishing effort was having on mixed stock salmon. Mixed stock salmon are salmon that originated in another country other than the country where they are captured in this case principally the United Kingdom. When the Department received a complaint from the European Commission, they were obliged to consider what steps could have been taken to ensure compliance with the Habitat Directive. There was a number of steps that could have been taken to ensure compliance with the Directive short of compulsory closing the fishery. One obvious option was a voluntary buyout, another was voluntary set aside and the third was a compulsory buy out backed up by a compensation scheme. There were other options as well as.

It is noteworthy that the three other countries that have significant salmon stocks UK, Denmark and Sweden did not go down the route taken by the Department of a compulsory

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closing of the fishery with a back up compensation scheme. In particular, it is of note that the United Kingdom did not close its own fishery although they had put in place a voluntary buy out scheme in 2003 and that ensured compliance with the Habitat Directive. I would have expected to receive the internal documents prepared by the Department when they were considering the question of how compliance could be brought about. The option of going down the UK route must have been considered by the Department.

I expected to receive any correspondence between the Department and the EU Commission and copies of the reports (2005, 2006 and 2007) of the National Salmon Commission. I would have expected to see any correspondence between the Department and the National Salmon Commission (NSC) on the problem raised by the EU Commission warning and in particular the options that required consideration if compliance was to be ensured. It seems to be the case that the National Salmon Commission having received correspondence from the Department were left with the belief that they had no option but to reluctantly advise the compulsory closing of the fishery. I would like to see the correspondence that the Department sent to this independent body, the National Salmon Commission, as it in turn was going to advise the Department on what steps should be taken. In addition I would expect to be furnished with a copy of the complaints to the Commission, a copy of the Commissions warning to Ireland and copies of the documents prepared by the Department with a view to bringing about compliance with the Directive.

When the Department took the decision to compulsory close the fishery, they were, in fact, confiscating an asset or a "possession" as that term is understood in the European Convention of Human Rights. Ireland has ratified the Convention and it is now incorporated into our domestic legislation. The European Court of Human Rights in the case of TTA -V- Sweden 10873/84 (1989 ECHR 15) has confirmed that a licence constitutes a possession within the meaning of Article 1 and the revocation of the licence 'could constitute an interference with the peaceful enjoyment of the possession'. I would expect to receive a copy of any document prepared by the Department when considering the question of whether or not the cancelling of the licence breached the European Convention on Human Rights. The European Convention on Human Rights provides in certain circumstances for the confiscation of assets but there are rules governing such an approach. I asked the Department whether or not the Bye-Law had been proofed by the Attorney General's Office for compliance with the existing laws, the rules of natural justice, the Constitution etc. I enclose a copy of my letter of 11th December, 2008 and a copy of their reply of 10th February, 2009 via the Chief State Solicitor's Office. They claim the advice of the Attorney General is privileged. I had not asked for the advice given by the Attorney General, I simply asked if the Bye-Law had been proofed by the Attorney General. My concern would be that the Department did not consider the issues at all or

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seek any advice. The documents prepared with a view to considering the legality of the action proposed would have informed me of the factors that the Department had considered when deciding to confiscate the asset.

I would be grateful if you would treat this letter as an appeal of the decision of the Department to furnish no documentation in reply to the request for further information and I enclose a cheque for €75 to cover the fee.

Whether or not the Department makes the information sought available to me is not going to cause me much difficulty either way. I am going to issue proceedings in the High Court to set aside the Bye-Law and as part of those proceedings, I will seek discovery and disclosure of the documentation referred to herein. I am satisfied that I will get the necessary order through the Courts. I do feel, however, that I have an obligation to exhaust the potential of the FOI Acts and that is what I am doing herein.

I think the way the Department has responded to the FOI makes a mockery of the Act and it is in charge of the process.

Yours faithfully,


Seán Boner
SEÁN BONER & COMPANY



27/03/2009

Mr Sean Boner
Sean Boner & Company
Quay Road,
Dungloe,
County Donegal

FOI Request Reference: FOI/2009/6

Dear Mr Boner,

I refer to the appeal you have made under the Freedom of Information Acts, 1997 and 2003 on the decision taken regarding your recent FOI request concerning, requesting all documents relied on by the Department when deciding to enact Bye Law 822 of 2007 and Bye Law 836 of 2008.

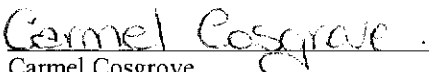
Your appeal was received in the FOI Unit on the 16th March 2009 along with the associated fee. You can expect a decision on your appeal by the 7th April 2009.

A full and new examination of the matter will be carried out by Mr Declan O'Rourke, Petroleum Affairs Division, Leeson Lane, Dublin 2. The Internal Reviewer can be contacted at 01 6782692.

If you are not satisfied with the outcome or if you have not received a reply within the designated timeframe, you are entitled to apply for a further review by the Information Commissioner.

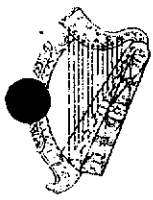
Any further queries please contact the FOI Unit.

Yours sincerely,


Carmel Cosgrove

FOI Unit
Elm House,
Earlsvale Rd
Cavan

Phone: 01 6782902



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

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

6 March 2009

Mr Sean Boner
Messrs Sean Boner & Company
Quay Road
Dungloe
Co Donegal

FOI Request Reference: FOI/2009/6

Dear Mr Boner

I refer further to your request under the Freedom of Information Acts, 1997 and 2003 for all documents relied on by this Department when deciding to enact Bye Law 822 of 2007 and Bye Law 836 of 2008.

As you may be aware the Government committed to aligning the management of the wild salmon fishery with the scientific advice from 2007 onwards in the interest of conservation of stocks. International best practice for the management of North Atlantic Salmon required the adoption of the precautionary approach and the cessation of indiscriminate mixed stock fisheries. Accordingly, since 2007 the harvest of salmon, by any means, has been restricted to those stocks in rivers that are meeting their conservation limits and commercial fishing and recreational angling has been undertaken only on a scientifically identified exploitable surplus.

A suite of measures is introduced annually for the management of the wild salmon fisheries. These include the Wild Salmon and Sea Trout Tagging Regulations which provide for, among other things, the quotas of fish that can be harvested by commercial fishing engines and rod and line from those rivers identified in Schedule 2 of the Regulations. The Regulations also provide for the tagging of fish generally and the use of brown tags in specified rivers. A number of bye-laws were also introduced to provide for the opening, closing and catch and release on specific rivers. Bye-law No. 822, 2007 and Bye-law No. 836, 2008 were required to prohibit the use of certain commercial fishing engines which were traditionally used in mixed stock fisheries and effectively to close such fisheries. In making these Bye-laws the Department relied on the advice of the Standing Scientific Committee (SSC) of the National Salmon Commission (NSC). The report of the SSC for 2008 can be viewed on the Department's website at www.dcenr.gov.ie Copies of the SSC reports for both years 2007 and 2008 are available from the Department on request. As these reports are lengthy documents there may be a charge for photocopying if required.

You may wish to be aware that a range of Bye-laws were adopted for each of the fishing seasons 2007 and 2008. These bye-laws can also be viewed on the Department's website at www.dcenr.gov.ie or on request from the Department.

If you have any queries regarding this correspondence you may contact me by telephone at the number beneath.

I wish to advise you that, if for any reason you are not satisfied with the outcome of your request, you are entitled to seek a review by appealing the decision. To appeal, you need to write to the FOI Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Cavan, Co Cavan. You must make your appeal within 4 weeks of the date of this letter, but the making of a late appeal may be permitted in certain circumstances. The review will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Please note that an application fee for an appeal is currently €75.00 and a reduced fee of €25.00 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 "Department of Communications, Energy and Natural Resources".

On receipt of the fee, you will be advised of when you can expect a decision on your appeal, and the contact details of the person handling the appeal.

Yours sincerely

Kathleen Regan

Kathleen Regan

Inland Fisheries Division

Telephone No 01-6782296

Email kathleen.regan@dcenr.gov.ie

FOI UNIT
CAVAN

13 FEB 2009

DEPARTMENT OF COMMUNICATIONS,
ENERGY & NATURAL RESOURCES
ROINN CUMARSAIDE, FUINNIMH
AGUS ACMHAINNI NADÚRTHA

Ms. Mary Rabbitte,
FOI Unit,
Department of Communications, Energy
and Natural Resources,
Elm House,
Earlsvale Road,
Cavan,
Co. Cavan

Our Ref:

SB/MMC/X792

Your Ref:

11 February 2009

BY EMAIL TO mary.rabbitte@dcenr.gov.ie; foi.unit@dcenr.gov.ie;

AND BY FAX TO 01 6783057


RE: BYE-LAW 822 OF 2007 AND BYE-LAW 836 OF 2008

Dear Madam,

We would be grateful if you would let us have copies of all documents relied on by the Department when deciding to enact the above two Bye-Laws.

We enclose Request for Access to Records Under the Freedom of Information Act, 1997 together with cheque in the amount of €15.00.

Yours faithfully


SEÁN BONER & COMPANY