



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

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

Our Ref: FOI/2008/39

24 June 2008

Mr Thomas Newman
Cornaher
Kilbeggan
Co Westmeath

Dear Mr Newman

I refer to the request which you made under the Freedom of Information Acts 1997 - 2003 for copies of certain documents relating to the sixteen successful companies under the Biofuels Mineral Oil Tax Relief Scheme II.

I have made a final decision to refuse your request of 28 May 2008 on the grounds that the information is held to be commercially sensitive and was provided to this Department in confidence.

The purpose of this letter is to clarify that decision. This clarification 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 the relevant records is attached to this letter. It shows the documents that this Department considers relevant to your request. It describes the documents and refers to the section of the FOI Act which applies 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.

Record numbers 1 - 32 relate to **Q.1** of your FOI request. We would not release copies of the six monthly progress reports submitted by any of the sixteen companies involved in the MOT Relief Scheme II as these are considered to be commercially sensitive. The reports contain technical descriptions of the projects, processes involved, plant facilities, details of compliance with planning and health and safety along with details of quantities of biofuel produced in compliance with the Revenue Commissioners requirements. It is considered that disclosure of any part of that information could prejudice the conduct or outcome of contractual or other negotiations of the successful project promoters. The information was provided to this Department in confidence on the basis that it would not be revealed to other parties.

With regard to **Q.2** of your FOI request, none of the sixteen successful project promoters has had their quota of excise relief, or any part thereof, withdrawn from them, therefore the documents you request do not exist.

Record numbers 49-55 relate to **Q.3** of your FOI request. This Department is ensuring that all projects are progressing on a timely basis in accordance with the details submitted by the project promoters in their original applications. The MOT Relief Scheme II covers a five year period to 2010. Project promoters are asked to notify the Department of any proposed changes or delays to the project. A number of project promoters have written to the Department requesting approval to make amendments to the projects originally proposed and approved by this Department. All such requests have been considered by the Department on a case by case basis. It should be noted that in the case of larger scale, long-term developments under the scheme significant investment is required and there is a significant lead in time for production start up and all such issues are taken into consideration when making a determination on any proposed amendments. You requested copies of the documents/letters from the companies that had given prior written notification to the Department for a time extension. I would point out that we would not release any such correspondence as it is considered to be commercially sensitive and was given to the Department in confidence. I would highlight that none of the sixteen successful project promoters is in breach of the scheme and the Department is continuously monitoring progress being made and in communication with project promoters on an ongoing basis.

Record numbers 33 - 48 relate to **Q.4** of your FOI request. Project promoters were not, in a lot of cases, awarded excise relief on the full amount of biofuel they had applied for in their applications to the Department. In cases where successful applicants were awarded excise relief on the volumes they had applied for, the Letter of Offer issued to those particular applicants included a schedule of placement of biofuels on the market to the period 2010. In cases where successful project promoters were not awarded excise relief on the full volumes of biofuels they had applied for, the Department requested them to provide a schedule of placement of biofuels on the market. The scheme allows for the roll over of volumes into the following year as appropriate. We would not release copies of any of the schedules, or correspondence relating to same between project promoters and this Department. This information is considered to be commercially sensitive and was given to the Department in confidence.

The relevant sections of the FOI Act are as follows:

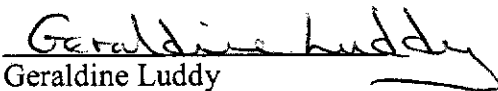
Section 26(1)(a) relates to information which was given to the Department in confidence.

Section 27(1)(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.

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 Energy Division

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Documents relating to the 6 monthly reviews of each of the 16 companies that received the excise rebate i.e. volumes produced and/or volumes imported. 1. Documents relating to the 6 monthly reviews of each of the 16 companies that received the excise rebate i.e. volumes produced and/or volumes imported. 2. Ask the Minister if "in the case of any material breach of these terms and conditions any such offer of MOT relief on a Biofuels project may, at the sole discretion of the Minister for Finance, be withdrawn and the Minister for CMNR may award relief in accordance with paragraph 6.5" Has this happened and 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" "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 those "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 a schedule for each of the 16 companies that were awarded 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.

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
	Six monthly report from Topaz Energy Ltd for the period 23 November 2006 to 31 May 2007	BF 5/20	4 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Topaz Energy Ltd for the period 1 June 2007 to 30 November 2007.	BF 5/20	5 pages	Report contains details of progress being made	Information was given to the Department in confidence.	Refuse	Section 26(1)(a) Section 27(1)(a)	

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				<p>on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>		<p>Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from One Fifty One Ltd for the period 23 November 2006 to 31 May 2007</p>	<p>BF 5/44</p>	<p>5 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from One Fifty One Ltd for the period 1 June 2007 to 30 November 2007.</p>	<p>BF 5/44</p>	<p>3 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	

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				<p>environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>competitive position of the company.</p>			
	<p>Six monthly report from Maxol Ltd for the period 23 November 2006 to 31 May 2007</p>	<p>BF 5/60</p>	<p>8 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from Maxol Ltd for the period 1 June 2007 to 30 November 2007.</p>	<p>BF 5/60</p>	<p>9 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	

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				with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.				
	Six monthly report from AER Ltd (Cooley Clearpower) for the period 23 November 2006 to 31 May 2007	BF 5/72	17 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from AER Ltd (Cooley Clearpower) for the period 1 June 2007 to 30 November 2007.	BF 5/72	11 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements,	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	

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	Six monthly report from Biodiesel Production Ireland Ltd for the period 23 November 2006 to 31 May 2007	BF 5/50	54 pages	production volumes, technical details of project and production costs. Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Biodiesel Production Ireland Ltd for the period 1 June 2007 to 30 November 2007	BF 5/50	35 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	

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	Six monthly report from Irish Food Processors Ltd for the period 23 November 2006 to 31 May 2007	BF 5/51	3 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Irish Food Processors Ltd for the period 1 June 2007 to 30 November 2007.	BF 5/51	3 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Green Biofuels Ireland Ltd for the period 23 November 2006 to 31 May 2007	BF 5/64	3 pages	Report contains details of progress being made on the project by the company which	Information was given to the Department in confidence. Information in the reports is considered to be commercially	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	

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Identify deletions

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Section of Act

Grant/refuse/
part-grant

Findings/
conclusions

Relevant Facts

No. of
Pages

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Brief Description and Date of Record

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				includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	sensitive. Release of information could prejudice the competitive position of the company.			
				Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
				Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	

Six monthly report from Green Biofuels Ireland Ltd for the period 1 June 2007 to 30 November 2007.

Six monthly report from Conoco Phillips for the period 23 November 2006 to 31 May 2007

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				<p>health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>				
	<p>Six monthly report from Conoco Phillips for the period 1 June 2007 to 30 November 2007.</p>	<p>BF 5/91</p>	<p>20 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from Goldstar Oils Ltd for the period 23 November 2006 to 31 May 2007</p>	<p>BF 5/43</p>	<p>3 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners &</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	

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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	Recorded/ Identify deletions
				<p>planning permission requirements, production volumes, technical details of project and production costs.</p>				
	<p>Six monthly report from Goldstar Oils Ltd for the period 1 June 2007 to 30 November 2007</p>	<p>BF 5/43</p>	<p>3 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from Biogreen Energy Products Ltd for the period 23 November 2006 to 31 May 2007</p>	<p>BF5/77</p>	<p>10 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	

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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	Recorded/ Identify deletions
	Six monthly report from Biogreen Energy Products Ltd for the period 1 June 2007 to 30 November 2007	BF5/77	10 pages	project and production costs. Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Eilish Oils Ltd for the period 23 November 2006 to 31 May 2007	BF 5/88	4 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Eilish Oils Ltd for the period 1 June 2007 to 30 November 2007	BF 5/88	4 pages	Report contains details of progress being made	Information was given to the Department in confidence.	Refuse	Section 26(1)(a) Section 27(1)(a)	

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				<p>on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>		<p>Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from Eco Fuels Ltd for the period 23 November 2006 to 31 May 2007</p>	<p>BF 5/9</p>	<p>6 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	
	<p>Six monthly report from Eco Fuels Ltd for the period 1 June 2007 to 30 November 2007</p>	<p>BF 5/9</p>	<p>6 pages</p>	<p>Report contains details of progress being made on the project by the company which includes information on quality and</p>	<p>Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the</p>	<p>Refuse</p>	<p>Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)</p>	

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				environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	competitive position of the company.			
	Six monthly report from Eco Ola for the period 23 November 2006 to 31 May 2007	BF5/28	5 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance with Revenue Commissioners & planning permission requirements, production volumes, technical details of project and production costs.	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	
	Six monthly report from Eco Ola for the period 1 June 2007 to 30 November 2007	BF5/28	7 pages	Report contains details of progress being made on the project by the company which includes information on quality and environmental management systems, health & safety legislation, compliance	Information was given to the Department in confidence. Information in the reports is considered to be commercially sensitive. Release of information could prejudice the competitive position of the company.	Refuse	Section 26(1)(a) Section 27(1)(a) Section 27(1)(b) Section 27(1)(c)	