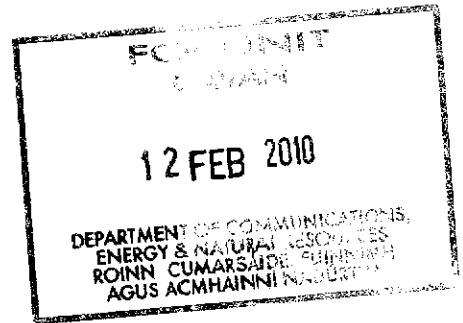


The Secretary General  
Dept. of Communications, Energy and Natural Resources  
Elm House  
Earlsvale Road  
Cavan



9 February 2010

Dear Sir

**Request for access to records under the Freedom of Information Act 1997**

In accordance with **Section 7 of the Freedom of Information Act, 1997** I request access to all non-personal records relating to the superannuation fund established by the Director of Telecommunications Regulation for her staff mentioned in section 27(8) of the Communications Regulation Act 2002 (hereinafter "the 2002 Act") including but not limited to records relating to its creation, the necessity for the said section 27(8) of the 2002 Act, the implementation or otherwise of the actions envisaged by the said section 27(8) of the 2002 Act and its status under the Financial Emergency Measures in the Public Interest Act 2009. I would prefer to receive copies of the records by post. I enclose the statutory fee of €15.

Yours faithfully

PTE

22/02/2010

FOI Request Reference: FOI/2010/4

Dear

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 12/02/2010 requesting records relating to the superannuation fund established by the Director of Telecommunications Regulation. The application was received along with the associated fee.

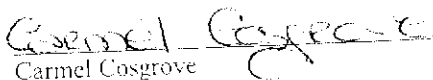
The officer handling your request will be Mr Philip McMahon, Communications Policy Division, Department of Communications, Energy and Natural Resources, 29-31 Adelaide Road, Dublin 2. Philip can be contacted on 01 6782944.

You can expect to receive your decision by the 12/03/2010.

If you have not received a decision by that time, 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 to be refused once the specified time for responding to it has expired. A request for a review should be addressed to the undersigned at the address shown.

Please note the Department of Communications, Energy and Natural Resources has a policy of posting a summary of non-personal requests and decisions on the Departments website for reference purposes.

Yours sincerely,

  
Carmel Casgrove

FOI Unit  
Department of Communications,  
Energy and Natural Resources  
Elm House, Earlsvale Rd  
Cavan

Phone: 01 6782902

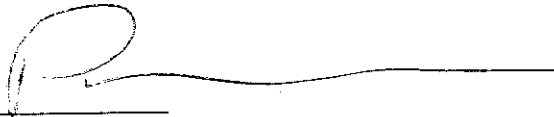
**Memo**

Spoke to \_\_\_\_\_ concerning his FOI request and he modified same as follows:-

'Records relating to the ODTR staff superannuation scheme forwarded to the Dept 2001 – 2002 including administrative sanction for same,

Records and Head of ComReg Bill 2002 relating to ComReg staff superannuation scheme.

Records relating to the finalization of the present staff superannuation scheme including model scheme templates advised by D/Finance.'

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line that extends to the right.

**Philip McMahon**

**3/3/10**



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

Department of Communications,  
Energy and Natural Resources  
Dublin 2.

12 March 2010

Our Ref. FOI/2010/4

Dear ..

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for records held by this Department and which was modified as follows following our telecom on 3/3/10:

'Records relating to the ODTR staff superannuation scheme forwarded to the Dept 2001 – 2002 including administrative sanction for same,  
Records and Head of ComReg Bill 2002 relating to ComReg staff superannuation scheme.  
Records relating to the finalization of the present staff superannuation scheme.

I have made a final decision to part grant your modified request on 3/3/10. If you have any queries regarding this correspondence you can contact me by telephone at 01 6782944.

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

1. a schedule of all of the records covered by your request;
2. concerning records to which access is granted, an explanation and a statement of the arrangements for this access, its form and the fee required to be paid;
3. concerning records to which access is denied, an explanation of the relevant findings; and
4. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these four parts in turn.

### **1. Schedule of records**

A schedule is attached at the end of this letter. It shows the documents that this Department considers relevant to your request. It also gives you a summary and overview of the decision as a whole. The schedule describes each document, and indicates whether the document is released in full, released with deletions or not released. The schedule refers to the sections of the FOI Act which apply to prevent release. As to these documents, the schedule also provides brief reasons for the decision which are meant to supplement the fuller and more detailed explanation given under heading 3. below.

### **2. Access Arrangements**

You have sought access to the records by means of photocopies, and I consider this an appropriate form of access in this case. The records will be made available to you on payment of a fee in the amount of € 25 which amount is calculated on this basis, one hour of staff time to locate and draw together the records covered by your request (@ €20.95 per hour,) and 4 cents for each page of photocopying (there are 200 such copies to be released to you). I have reduced the photocopying charge because you have agreed to collect the records and pay the monies due on collection on Monday 15/3/10.

Payment should be made by way of Bank Draft, Money Order, Postal Order or personal cheque made payable to Dept. Communications , Energy and Natural Resources.

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

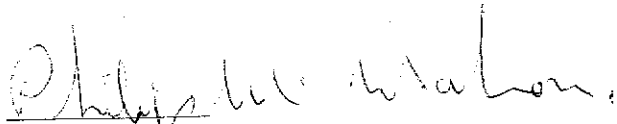
The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

The records not being released are as follows: ComReg Draft Rules (based on Model Scheme) and the Schedule of Changes made by ComReg to Model Rules. I have decided not to release these records under section 21 of the FOI Act because according to ComReg they have not yet been agreed by all the parties concerned and their disclosure could impact on ComReg's negotiating position.

### **4. Rights of appeal**

You may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Dept. Communications, Energy and Natural Resources, Elm House, Cavan. Your correspondence should include a fee of €75 for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to Department of Communications, Energy and Natural Resources. You should make your appeal within 4 weeks from the date of this notification. However, the making of a late appeal may be permitted in appropriate circumstances. *A week is defined in the Act to mean 5 consecutive weekdays, excluding Saturdays and public holidays (Sundays are also excluded, as they are not weekdays).* The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department/Body.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Philip McMahon".

Philip McMahon  
Communications Policy Division



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

Department of Communications,  
Energy and Natural Resources  
Dublin 2.

Re. FOI Request. Ref. No. FOI/2010/4

Dear

I wish to acknowledge receipt of *cheque* for the sum of €25 being fee payable in respect of records released concerning the above.

*cheque rec'd  
+ banked.*

Yours sincerely

Philip McMahon  
3/15/2010

Schedule of Records: Summary of Decision Making

Record No.	Brief Description & Date of Record	File Ref.	No. of Pages	Relevant facts	Findings/ conclusions (Public Interest Considerations, (If applicable))	Grant/refuse/part	Basis of Refusal: Section of Act	Record edited/Identify deletions
1	Memos dated 20/11/2000 and 21/2/02 And letters from D/finance dated 14/9/00 and 13/12/01	Leg/Tel 9 v13	3	Staff and pension issues		grant		Refs outside the scope deleted
2	Head 18 of Com Reg bill dated March 2001 Superannuation (staff)	Leg/Tel 9 v13	3	Draft regs		grant		
3	ODTR Pension plan- Trust Deed and Regulations submitted 14/3/2002	Tel/ComReg 14 Vol 1	120	Draft ODTR Pension plan- Trust Deed and Regulations		grant		
4	Covering letter with above 14/3/2002	Same as above	2	Covering letter seeking approval in principal		grant		
5	Letter to D/Finance 5/4/02 and enclosure re bill	Same as above	3	Seeking D/Finance approval in principal		grant		
6	'Model Employee Superannuation Scheme' received from D/Finance	Same as above	27	Details of scheme		grant		

	2002								
7	Letter to D/finance 24/4/2003	Same as above	1	Response to our letter of 5/4/02		grant			
8	Circular from D/finance 13/3/04 Public service Supperan (Misc) bill 2004	Same as above	3	Info of possible implications of Bill		grant			
9	D/finance letter dated 6/7/04 Instructions and admin sanction	Same as above	2	Admin sanction for Comreg pension scheme		grant			
10	Email from D/finance and enclosure on new template for pension Model Scheme 29/11/04	Same as above	20	Changes to Model Template		grant			
11	Email to Comreg concerning record 10 1/12/04	Same as above	1	Changes to Model Template		grant			
12	Email and enclosure Letter from D/finance 5/5/05 Forwarded to Comreg on 11/5/05	Same as above	3	Revised Contribution rates		grant			
13	Emails to ComReg 12/5/05	Same as above	2	Requesting submission of scheme for formal approval		grant			
14	ComReg's letter 1/3/06	Same as above	2	Response to our request at record 11		grant			

15	Pension documents forwarded by ComReg 16/9/09 : (1) Trust Deed, (2) Draft Rules (based on Model Scheme Rules) and (3) Schedules of Changes made by ComReg to Model Rules respectively	Tel/ComReg 14 vol 11	44	Documents relate to final draft of present pension scheme		Doc (1) granted. Docs (2) & (3) Refused	Section 21: Rules not yet agreed would impact on the negotiating position of a public Body	
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An Roinn Airgeadais  
Department of Finance

Sraid Mhuirfean Uacht, Upper Merrion Street, Telephone: 353-1-676 7571  
Baile Átha Cliath 2, Dublin 2, Facsimile: 353-1-678 9936  
Éire. Ireland. LoCall: 1890 66 10 10  
VPN: 8109  
<http://www.ir.gov.ie/finance>

14th September 2000

Mr Aidan Hodson  
Communications Division  
Department of Public Enterprise

Dear Aidan

I refer to my minute of 31st August regarding the draft General Scheme of a Communications (Regulation) Bill 2000. My suggested changes (copy attached) to Head 14: Paragraph 2 (a) (now 3a) in relation to "numbers grading and remuneration" have not been included. I have now received some additional observations in relation to the Superannuation issues:-

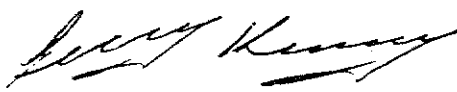
**General**

- All Superannuation Schemes must be made with the approval of the appropriate Minister and with the consent of the Minister for Finance (see the Aviation Bill, Section 21(1) to 21 (5)).
- A provision will be required for the payment of superannuation benefit otherwise than in accordance with the Scheme. This provision will allow for the payment of superannuation benefit prior to the commencement date of a Scheme (see last lines 21(5) of the Aviation Bill).

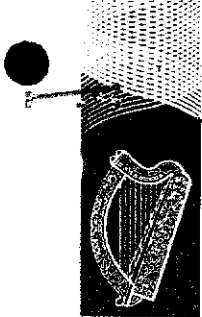
**Head 18: Superannuation (Staff)**

- Paragraph 6 of Head 18 (Staff Superannuation) provides for the establishment of a fund from which superannuation benefits would be paid. A similar paragraph could be inserted in Head 17 (Commissioners Superannuation). However, the establishment of any such fund will require the approval of Public Expenditure Division and their observations on funding should be sought.
- Paragraph 6 of Head 17 should also be included in this head.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Gerry Kenny". The signature is written in dark ink and is positioned above the printed name.

Gerry Kenny  
Votes Control Section  
Organisation Management & Training Division



An Roinn Airgeadais  
Department of Finance

(12/01/02)

P6/026/98

*Aun Walsh*

*at to 12/01/02*

Mr. Aidan Hodson

Personnel

Department of Public Enterprise

73-79,  
Sraic an Mhóta Iocht.,  
Baile Átha Cliath 2,  
Éire.

73-79,  
Lower Mount Street,  
Dublin 2,  
Ireland.

Telephone: (01) 676 7571  
Facsimile: (01) 604 5499  
GTN: 7109  
URL: <http://www.irfgov.ie>

*Communications (Regulations) Bill, 2001*

I refer to my minute of 4 December 2001 about the above Bill and, as promised, I am forwarding detailed comments on the superannuation Heads (17 and 18).

**Head 17 Superannuation of Commissioners**

## Head 18 Superannuation of Staff

- 7
- 1 The wording of 18.1 implies that no scheme need be made, which would be very unusual. *continuous staff profile*
  - 2 If no scheme is made, then there is no provision for fixing the time and conditions of retirement for the staff.
  - 3 There is no mention of the Minister for Public Enterprise here - it would be usual for the scheme to be approved by that Minister, with the consent of the Minister for Finance. This comment refers to all references to ministerial approval in both Heads.

*no  
but  
letter  
to  
guarantee  
the  
staff's  
rights*

Is it the case that some members of the staff were guaranteed, under earlier legislation, that the terms and conditions under which their superannuation entitlements were to be calculated would be no less favourable than their existing terms and conditions at the time of transfer? If this is the case, is it necessary to repeat that guarantee in this Bill?

*Breda Byrne*

Breda Byrne

Pensions Section

13 December 2001

## Issues arising from Public Consultation on Draft General Scheme of Communications (Regulation) Bill

In the public consultation on the Draft General Scheme comments were received from 21 companies, organisations and individuals. The full list of respondents to the public consultation is appended to this note. The following are the main points raised on which decisions need to be made on whether changes should be made to the text. The issues are set out below in the order in which they arise in the Draft General Scheme. In addition, a number of points of detail were made and many of these are being incorporated into the final draft. These points of detail are not referred to here.

### Staffing and Pension issues (Heads 14 and 18)

Currently, under the 1996 Act establishing the ODTR, there is no provision for control by the Minister for Finance of the pay and conditions of staff of the ODTR.

The basis for this is that

- the ODTR is self-financing and therefore does not need a grant-in-aid from the Exchequer to pay staff;
- the ODTR needs to be able to compete for recruitment of staff offering rates of pay taking into account the rates paid in the communications industry;

- it contributes to the independence of the ODTR.

The Department of Finance are arguing that

- public pay policy requires that all public authorities should be subject to controls on pay and conditions;
- the Electricity and Aviation Regulators are/will be subject to these controls
- as regards pensions, since the Exchequer will have to fund the portions of the pensions of those members of the staff of the ODTR/Commission in relation to the period they had served in the civil service, controls on pensions will be appropriate.

Bill provides for commercial negotiation among operators and intervention by the Director to resolve disputes. It enables the Director to lay down rules for the apportionment of costs. Consideration will be given in the course of drafting whether further clarity on this issue could be made in the text.

A handwritten signature in black ink, appearing to read 'Aidan Hodson', written in a cursive style.

Aidan Hodson

20 November 2000

**DRAFTING INSTRUCTIONS FOR PARLIAMENTARY COUNSEL**  
**FOLLOWING MEETING WITH DEPARTMENT OF FINANCE ON 20 FEBRUARY 2002**

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**Section 28**

- Provide for a dispute resolution mechanism similar to Section 27(3)
- Section 28(a) may have to be deleted pending outcome to technical query on the status of some staff

**Section 31**

Section 6 on page 53. Possible error on second line of subsection 6. Should the reference refer to the First Schedule and not the Second Schedule ?

**Other Minor Matters to be Addressed – Not Associated With D/Finance Observations.**

**Sections 56 and 57** – The titles of both sections should state “Electronic Communications” instead of “Telecommunications”.

*Ann Walsh*

**Ann Walsh  
Department of Public Enterprise  
21 February 2002**

2

**Department of Public Enterprise**

General Scheme  
of  
Communications (Regulation) Bill

March 2001

## Head 18: Superannuation (Staff)

1. The Commission shall prepare and submit to the Minister for Finance a scheme or schemes or make such other arrangements with the approval of the Minister for Finance for the granting of superannuation benefits to or in respect of such members of the staff of the Commission as it may think fit.
2. Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different categories of persons.
3. Every scheme under this Head may with the consent of the Minister for Finance be amended or revoked by a subsequent scheme prepared under this Head.
4. A scheme under this Head shall if approved by the Minister for Finance be carried out by the Commission in accordance with its terms.
5. No superannuation benefit shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than in accordance with a scheme under this section or otherwise as may be approved of by the Minister for Finance.
6. As soon as may be after the establishment day, the Commission shall with the consent of the Minister for Finance establish a fund administered by trustees who shall be appointed by the Commission from which superannuation benefits payable under a scheme under this section shall be paid.
7. The assets and liabilities of a superannuation fund established by the Director for his or her staff shall be transferred to a fund referred to in Paragraph 6.
8. The trustees appointed by the Commission shall include one trustee nominated by the staff of the Commission.
9. The Minister for Finance shall agree with the Commission an appropriate contribution, related to reckonable service given before the establishment day, towards the superannuation benefits which may be granted to or in respect of
  - (a) persons who are transferred from the office of the Director to the Commission and who immediately before the establishment day were members of the staff of the Minister, and
  - (b) persons who are transferred from the office of the Director to the Commission and who have previous service in the Civil Service

and shall, subject to paragraph 11, pay such contribution to the trustees appointed under paragraph 6 at such times and in such manner as shall be agreed with the Commission.

10. Where any part of the contribution under paragraph 9 remains unpaid for any period after the commencement of this section, interest shall be payable by the Minister for Finance to the trustees appointed under paragraph 6 at such rate as the Minister for Finance may agree with the Commission in respect of that period on the amount so unpaid.
11. Payments under paragraphs 9 or 10 shall be made not later than 7 years after the commencement of this section.
12. A scheme under this section shall be laid before each House of the Oireachtas by the Minister for Finance as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next subsequent 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
13. Moneys required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce thereof.

#### **Explanatory Note**

This provision is modelled on provisions contained in the Aviation Regulation Bill, 2000. Additional provisions reflect the specific circumstances of the staffing of the ODTR.