



Department of Communications, Energy and Natural Resources
Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádirtha

9th September, 2008

Mr Ray Gordon,
MKC Communications,
The Archway,
4 Pembroke Street Lower,
Dublin 2.

FOI Request Reference: FOI/2008/47

Dear Mr. Gordon,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 4th September, 2008 requesting records dealing with the tax relief relating to bio-ethanol. The application was received along with the associated fee.

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

You can expect to receive your decision by the 2nd October, 2008.

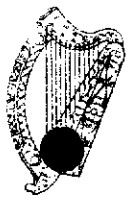
If you have not received a decision by that time, you are automatically entitled to appeal to the Department for a review of the matter. This review proceeds on the legal basis that the initial request is considered to be refused once the specified time for responding to it has expired. A request for 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,

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

Phone: 01 6782903



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

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

Our Ref: FOI/2008/47

1 October 2008

Mr Ray Gordon
Managing Director
MKC Communications
Ray@mkc.ie

Dear Mr Gordon

I refer to the request which you made under the Freedom of Information Acts 1997 - 2003 for copies of all records dealing with the marking system for the award of tax relief relating to the four successful projects in the bioethanol category in the Biofuels Mineral Oil Tax (MOT) Relief Scheme II. You also sought an explanation of the relationship between marks awarded in the tendering process and the quantity allocated to successful tenderers.

I have made a final decision to part-grant your request of 2 September 2008. 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 No.1 is the document relating to the scoring guidelines and evaluation criteria used by the assessment panel in assessing the applications as provided in paragraph 5.8 of the Guidance Note for Applicants on Application Procedure. This document is available on the Departments website and available for anyone to access and therefore the FOI Act does not apply to this document. **Section 46(2)(a)(b)** relates to information which is available outside the scope of the FOI Act. I enclose a copy of this document for your convenience.

Record No's 2 to 5 are the score sheets prepared by the assessment panel for the four individual successful projects in the bioethanol category. I am part-granting this request by providing you with copies of the four score sheets in question but on the basis that the names of the applicants in question and the file record number on the sheet would not be revealed. **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 with the names revealed.

With regard to your request for an explanation of the relationship between marks awarded in the tendering process and the quantity allocated to successful tenderers, the scheme was rolled out as a competitive call for proposals i.e. as an open and transparent process in which the scoring mechanism was published as part of the application form and accompanying documentation. The scheme was the subject of a State Aids application which was approved by DG Competition under the relevant State Aids Guidelines. Full details of the scheme including the application and scoring procedures, were submitted as part of the clearance process for the scheme. Under State Aids Rules the process must be open and fair and subject to single market rules. The EU transport fuel market is fully liberalised and EU rules do not allow for positive discrimination. Neither could preference be given to any participants within the competition by virtue of the origin of biofuels or biofuel feedstocks, or by the size or nature of the company applying for excise relief.

An assessment panel was established to review the applications under the scheme comprising officials from the Department of Communications, Energy and Natural Resources, Sustainable Energy Ireland and Enterprise Ireland. Each application under the scheme was marked individually in accordance with the evaluation criteria outlined in the Guidance Notes provided to all applicants for the Scheme. Applicants were scored on the overall evaluation of the project, sourcing of biofuel or feedstocks, quality assurance, access to market and project management/competence to deliver the project. The final scores were then listed and the assessment panel awarded mineral oil tax relief to the highest scoring in each category, followed then by the second highest scoring and so forth. A score sheet was compiled by the assessment panel for each successful applicant. There were specific limits on the amount of excise relief available under the various categories in the scheme and this was stipulated in the Guidance Notes. Biofuels MOT Relief for Scheme II was ring-fenced within a budgetary envelope of just over €200m.

All applicants were requested to specify the minimum volume on which they required excise relief in order for their project proposal to remain viable – Part 3 of the Application Form, which forms part of the Guidance Note enclosed, refers. The

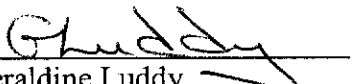
purpose of this provision was to provide information to the assessment panel, where a number of applications were being considered. If the level of excise relief available for allocation exceeded the volumes applied for, the assessment panel wanted to be in a position to apply excise relief on smaller volumes as necessary. The assessment panel wanted to know whether a project would continue, if allocated excise relief on a smaller volume than that which was sought by the applicant.

The Minister for Communications, Energy and Natural Resources was obliged to make recommendations to the Minister for Finance in relation to biofuels projects to be approved for excise relief under the scheme. Any recommendations made were based on the actual sum provided by the Minister for Finance for the excise relief programme. Applicants were not awarded the full amount of MOT relief sought in every instance.

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, Energy 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

FOI Request Reference: FOI/2008/47

Schedule of Records: Summary of Decision Making

request for all records dealing with the marking system for the award of tax relief relating to bioethanol held by the DCENR in respect of the following contracts BF 5/20, BF 5/44, BF 5/60, BF 5/72. Request for explanation of the relationship between marks awarded in the tendering process and the quantity allocated to successful tenderers.

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
	Guidance Note for Applicants on Application Procedure	Electronic Format	55 pages	Guidance Note for Applicants on Application Procedure which includes the selection criteria and scoring guidelines for the scheme.	This document is available on the Department of Communications, Energy and Natural Resources website.	Refuse	Section 46(2)(a)(b)	
	Score sheet for the application as compiled by the Assessment Panel.	n/a	1 page	Scores awarded to the application.	This document is being released but with the name of the company and the file reference deleted in order that the marking for a particular company cannot be determined as it is considered that the release of scores with company names included could prejudice the competitive position of the company.	Part grant	Section 27(1)(b) Section 27(1)(c)	Name of Company and file reference deleted
	Score sheet for the application as compiled by the Assessment Panel.	n/a	1 page	Scores awarded to the application.	This document is being released but with the name of the company and the file reference deleted in order that the marking for a particular company cannot be determined as it is considered that the release of scores with company names included could prejudice the competitive position of the company.	Part grant	Section 27(1)(b) Section 27(1)(c)	Name of Company and file reference deleted
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CATEGORY - Bioethanol

Project Name: [REDACTED] **File Reference :** [REDACTED]

Parameter	Max points	Score
Overall Evaluation	10	9
Sourcing of Biofuel	20	16
Quality Assurance	30	28
Access to Market	20	19
Project Management and Competence to Deliver Project	20	18
Overall Score	100	90

CATEGORY - Bioethanol

Project Name: [REDACTED] **File Reference :** [REDACTED]

Parameter	Max points	Score
Overall Evaluation	10	9
Sourcing of Biofuel	20	18
Quality Assurance	30	25
Access to Market	20	16
Project Management and Competence to Deliver Project	20	17
Overall Score	100	85

CATEGORY - Bioethanol

Project Name: [REDACTED] File Reference : [REDACTED]

Parameter	Max points	Score
Overall Evaluation	10	6
Sourcing of Biofuel	20	16
Quality Assurance	30	27
Access to Market	20	19
Project Management and Competence to Deliver Project	20	17
Overall Score	100	85

CATEGORY - Bioethanol

Project Name: [REDACTED]

File Reference: [REDACTED]

Parameter	Max points	Score
Overall Evaluation	10	6
Sourcing of Biofuel	20	17
Quality Assurance	30	27
Access to Market	20	17
Project Management and Competence to Deliver Project	20	18
Overall Score	100	85

You may be asked by the Decision maker for clarification – it is important to note we have not contacted the relevant division yet as we do not consider this a FOI request without the initial fee.

If you require any further details please contact me.

Regards,

Seána McGearty
FOI Unit,
DCENR
Elm House,
Earlsvale Road,
Cavan.
Ph: 01 678 2902
Email: FOI.Unit@dcenr.gov.ie

From: Ray Gordon [<mailto:Ray@mrpakinman.ie>]
Sent: 11 June 2008 15:40
To: FOI Unit
Subject: FOI Request

Freedom of Information Request:

Could I please request all records dealing with the marking system for the award of tax relief relating to bio-ethanol held by the DCMNR in respect of the following contracts BF 5/20, BF 5/44, BF 5/60, BF 5/72. Could you further explain the relationship between marks awarded in the tendering process and the quantity allocated to successful tenderers.

Regards

Ray Gordon
Managing Director
MRPA KINMAN
The Archway, 4A Lower Pembroke Street Dublin 2, Ireland.
Tel. +353 1 703 8619 / Fax. +353 1 678 8331
Mobile: 00353 87 2417373
Email: ray@mrpakinman.ie Web: www.mrpakinman.ie
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