



H/04/08

Our ref; FOI/0002/2008

11 April 2008

Mr. Frank O'Domhnaill,
Corr na Gaoithe,
Corr na Móna,
Co Galway

Dear Mr. O'Domhnaill,

Introduction

I refer to your letter dated 4th March seeking an internal review under Section 14 of the ("FOI") Freedom of Information Act of the decision conveyed to you under the above quoted reference regarding records you requested.

Appeal request .

Your appeal states "*Of the projects offered contracts, how many of them requested an extension of time before 31 December 2008?*" As explained in "preliminary matters" below I have interpreted the reference to 2008 as a reference to 2005.

Decision reached

i) Decision

The "Freedom of Information Act" provides a right to access to records requested which are held by Government Departments and in this case records held by the Department of Communications, Marine and Natural Resources, where any such records exist.

Following a discussion with the decision maker in this case and following my own enquiries I have failed to identify a record or any reference to a record of the number of projects in AER VI which requested an extension of time by end 2005. I am satisfied that no record of the type requested has been withheld and there is therefore no record to be released in response to your appeal.

ii) Related matters

I have set out below a preliminary decision I reached regarding the time deadline stated in your appeal which is stated to be 2008 and which I have interpreted as 2005. However for your additional information I am also satisfied that even if the deadline of end 2008 was submitted in your original application and the subsequent appeal the response up to this date or any intervening date would be the same i.e., no record of the type requested was created or currently exists.

The only record not released in full was part of a letter which excluded the identity of the author. All other information including the identity of the commercial undertaking which was the subject in that correspondence was released. I am satisfied that the limited information withheld is not related in any way to the information sought in your appeal.

I have also endeavoured to provide additional general clarification on access to extensions of time for applicants in AER VI which I hope is of assistance.

Preliminary matter - Scope of your appeal

Your appeal seeks records up to a deadline of end 2008. The initial request of 14th January last and the response thereto was in the context of records held up to end 2005. On this basis alone it can be reasoned the deadline for records sought in an appeal should be consistent with the original request which in this case is 2005. I have interpreted the reference to 2008 in the appeal as a clerical error and I have read it as 2005 but I have commented further in the context of a 2008 deadline to provide you with as much clarity as is reasonably possible within the limits of the information sought.

The clarification on the deadline above and the additional general clarifications below are, of course, without prejudice to any further action you may propose in this matter.

Additional clarification on access to extensions of time under AER VI

Access to extensions of time in AER IV could arise under two separate rules viz. – (i) in paragraphs 4.3 at the request of an applicant or (ii) in accordance with paragraph 4.7. If an applicant qualified for an extension of time under paragraph 4.7 that applicant gained no advantage by also seeking an extension of time under paragraph 4.3, as explained further below. It is also shown below that because of the “*ex ante*” effect of the extension permitted under the AER VI rules in paragraph 4.7 it would not be possible to quantify or create a record of the number of projects where applicants assumed an extension under that clarification because that extension applied “as a matter of course”.

Access to extension of time in AER VI could arise, subject to conditions, as summarised below:-

- paragraph 4.3 of the AER VI notes provides for a request for an extension of time which is qualified by article 4.6 and which is time-bound,
- paragraph 4.6 provides that an applicant can only seek one extension of time,
- paragraph 4.7, commencing “*however*”, conditions paragraphs 4.3-4.6, by providing an alternative source of an extension of time if the delays arise from a delayed connection,
- an applicant who achieved an extension of time under paragraph 4.7 would gain no benefit by seeking an extension for the same period under paragraph 4.3 thereby exhausting the one opportunity to secure an extension which was already available to that applicant under paragraph 4.7, and
- a decision by the CER to apply a moratorium for new connection offers and delays arising thereafter had the effect that delayed connections affected a significant proportion of AER VI projects.

The Department clarified that the extension permitted by clause 4.7 applied “as a matter of course” if the circumstances notified therein regarding general compliance and a delayed connection arose. This clarification had direct effect. In other words the extension of time existed *ex ante* if all the applicable conditions were met and non-compliance would only be established if evidence to the contrary came to notice *ex-post*. This is the documents “numbered 4” copied to you previously

There is no means of calculating the number of projects which availed of the time extension permitted by paragraph 4.7 which extensions arose as a matter of course if the circumstances notified in paragraph 4.7 and first clarified by public notice prevailed. There is no means of creating a record of the number of projects which availed of this discretion. As explained above there was no benefit for any applicant exercising the option to seek an extension of time under paragraph 4.3 if the extension of time permitted by paragraph 4.3 was already available under paragraph 4.7 for the same period. The right to the extension was decided *ex ante* by the applicant and only if projects came to notice later would the Department have any need to confirm to itself the conditions in paragraph 4.7 had applied in the relevant period. Projects which had availed of the extension but did not subsequently build would not come to notice in the same manner.

Further actions

You may appeal the decision notified above in writing to the Information Commissioner at:
18 Lower Leeson Street
Dublin 2
Co Dublin.

If you wish to appeal, I am informed you must usually do so not later than 6 months after receiving this letter. Should you write to the Information Commissioner, making an appeal, you might refer to this

letter. If you make an appeal to the Information Commissioner all correspondence should be directed to the address above in the first instance.

I am also informed 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. I understand the application fee is currently €150 and a reduced fee of €50 will apply if a person is covered by a Medical Card.

Any person claiming a reduced application fee, must submit the following as part of the application process at the reduced fee-

- the Medical Card registration number,
- the name of the issuing body whether a Health Board or, now, the HSE and
- consent to the verification of these details by the issuing body.

Payment should preferably 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, you can expect receipt an acknowledgement letter outlining details of when you can expect a decision on your request, and the contact details of the person handling the application.

Yours sincerely,



Eugene Dillon

cc FOI Unit, DCENR.
File GEN 2/1



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

19th March, 2008

Mr. Frank Ó Domhnaill,
Corr na Gaoithe,
Corr na Móna,
Co Galway.

FOI/0002/2008

Dear Mr. Ó Domhnaill,

I refer to the appeal you have made under the Freedom of Information Act on the decision taken regarding your recent FOI request concerning AER V and AER VI contracts.

Your appeal was received in the FOI Unit on the 5th March, 2008 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 31st March, 2008.

A full and new examination of the matter will now be carried out by Mr. Eugene Dillon, Department of Communications, Energy & Natural Resources, Renewable & Sustainable Energy Division, 29 – 31 Adelaide Rd., Dublin 2. He can be contacted at 01 6783203. If you have any comments on this arrangement please notify us no later than 27th March, 2008.

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 €75.00 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



Corr na Gaoithe

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**FOI UNIT
CAVAN**

- 5 MAR 2008

DEPARTMENT OF COMMUNICATIONS,
ENERGY & NATURAL RESOURCES
ROINN CUMARSAÍDE, FUINNIMH
AGUS ACMHAINNÍ NADURTHA

Ms. Mary Rabbitte,
Freedom of Information Unit,
Dept. of Communications, Energy & Natural Resources,
Elm House,
Earlsvale Road,
Cavan.

4th. March 2008.

Re:- Rights of Appeal & Reference Number: FOI/0002/2008.

Mary, a chara,

I would like to refer to letter of 8th. February 2008 from Mr. Gerry Mc Tiernan, Sustainable & Renewable Division, Dept. of Communications, Energy & Nat. Resources, as per Reference No listed above.

Corr na Gaoithe Teo wish to appeal a decision taken under the **Freedom of Information Act.**

Our request of 14th. January had
'Of the projects offered AER VI contracts, how many of them requested an extension of time before 31 Dec 2008?'

We have not received the information requested. Corr na Gaoithe Teo clarify as follows:-

In section 4 (conditions of offer) in the DCENR AER VI competition details paragraph 4.3 states
"If circumstances arise whereby the applicant will be unable to meet a time deadline due to circumstances beyond its control, or that of its servants or agents, and if an extension to the time deadline is required, then the applicant shall give prior written notification to the Minister setting out the reasons and the extended period which the applicant requires to meet the relevant obligation and the Minister may in his sole discretion.....accede to the request to extend the time deadline"

The Dept supplied under the FOI Act in Record 4 details of the competition rules but not the requested information we asked for i.e. what projects gave written notification of a request for an extension of the time deadline as is in accordance with section 4.3 above.

We have not received the information requested and again request same.

A cheque to the amount of €75.00 in accordance with the requirements under the
'Rights of Appeal' is enclosed.

Mise le meas,

Frank Ó Domhnaill,
For and on behalf of
Corr na Gaoithe Teo.