



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

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

Your Ref: 019794.0001.JH

Our Ref: FOI/27/2008

4 June 2008

Ms Claire Waterson
William Fry Solicitors
Fitzwilton House
Wilton Place
Dublin 2

Dear Ms Waterson

I refer to the appeal made on your behalf by John Handoll under the Freedom of Information Acts 1997 and 2003 on 9 May 2008 for review of the earlier decision of this Department dated 6 May 2008.

I am a more senior member of the staff of this Department than the person who made the decision of 6 May 2008. I have decided to uphold the original decision not to release certain of the information sought. This review decision is an entirely new and separate decision on your request, and is explained below.

Section 10

I have reviewed your information request. I am of the opinion that the extent of the information being sought by you is extremely voluminous to the point that it would be a major administrative job to list all of the documentation sought by you with a decision made on the release or non-release of each individual document, and that such an exercise would be an inappropriate use of State resources. I have attached summary lists of the relevant files/folders held by the Department in relation to the National Broadband Scheme (NBS), Appendix I lists the physical files held by the Department, Appendix II lists the computer folders (within which there are hundreds of documents) held by the Department. As you are aware I wrote to you to explore the possibility of narrowing the request in order to assist the process, and we subsequently discussed the matter, but could not agree to a narrowing of the information being sought. My review decision is that the information request is too voluminous and is refused under Section 10 (c) of the FOI Acts.

Section 20

The decision of 6 May 2008 refused part of the documentation being sought under Section 20.

I acknowledge your point that some of the information being sought would not form part of the deliberative process that is the NBS tendering process, but I consider that a substantial amount of the information does form part of the deliberative process.

My view is that the information you have sought comes under the NBS tendering process, and that this is an on-going deliberative process. If all of the documentation was released it would meet the information request and demonstrate technology and cost considerations, tender negotiations and price quotes. My view is that releasing all of the information would not be in the public interest as it could potentially compromise the tender process whereby the State could get less value for money. As above I do not consider it administratively efficient to make all of the decisions required on the release or non-release of all of the individual documents being sought, and that releasing all of the information would not be in the public interest as a significant part of the information being sought is part of an on-going deliberative process involving State funds, and that it could result in less value for money.

Section 22

The decision of 6 May 2008 refused part of the documentation being sought under Section 22 as Judicial Review proceedings relating to certain parts of the NBS process were before the courts, and releasing the information sought could possibly interfere with these proceedings, and could lead to contempt of court. It is noted that these proceedings had only started at the time of the decision of 6 May 2008. I have discussed this decision with the decision maker who advised that his decision was based on the potential for a discovery of documents to be served as part of the Judicial Review. The Judicial Review is scheduled for hearing next week, no discovery of documents has been served to date, nor is it likely to be served at this stage. I am therefore of the view that the refusal to release certain of the information sought under this Section is not now appropriate, albeit there were valid reasons for the initial decision.

Section 27

My view is that the information you have sought comes under the NBS tendering process, and that some of this information is commercially sensitive. If all of the documentation was released it would meet the information request and demonstrate technology and cost considerations, tender negotiations and price quotes. My view is that this would not be in the public interest as it could reasonably be expected to result in financial loss, could prejudice commercial positions and could prejudice the outcome of contractual negotiations for either our technical consultants, bidders and/or the State, and that this would not be in the public interest. As above I do not consider it administratively efficient to make all of the decisions required on the release or non-release of all of the individual documents being sought, and that releasing all of the

information would not be in the public interest as some of the information is commercially sensitive.

Right of appeal

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. There is a fee of €150 for such appeals, other than appeals against a decision to impose a fee. If you wish to appeal, you must usually do so not 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

Brendan Buckley
Assistant Principal
Communications (Development) &
Electronic Commerce Division

National Broadband Scheme (NBS)			
	1	NBS Planning	
NBS	1/1	Initial Info Summer 2006	
NBS	1/2	ComReg Involvement	
NBS	1/3	BT NI Material	
NBS	1/4	Regional Co-ordinators	
NBS	1/5	Service Providers	
NBS	1/6	Mapping	
NBS	1/7	Preliminary Appraisal	
NBS	1/8	Regional Assemblies	
NBS	1/9	Project Plan	
	2	NBS Design	
NBS	2/1	ComReg Coverage Option	
NBS	2/2	DG Competition State Aid	Vol 2
NBS	2/3	Consultancy	
NBS			
NBS			
NBS			
	3	NBS Implementation	
NBS	3/1	PIN Notice	
NBS	3/2	IM, PQQ, Contract Notice	
NBS			
NBS			
NBS			
NBS	3/3	ITPCD Phase	
NBS			
NBS			
NBS			
NBS			
NBS	3/4	RITPCD Phase	
NBS			
NBS			
NBS	3/5	RSR Phase	
NBS	3/6	ITT	
NBS	3/7	NBS Contract	
NBS	3/8	Rollout	
	4	NBS Management & Administration	
	4/1	Steering Committee	
NBS			
NBS			
NBS	4/2	Working Group	
NBS	4/3	Minister's Meetings	
NBS	4/4	PQs	
NBS	4/5	Information Requests	
NBS	4/6	Other Meetings	
NBS	4/7	Press Releases & Conferences	
NBS	4/8	Financials	
NBS	4/9	Resources	
NBS	4/10	Operational Funds BMW & S&E	
	5	NBS Judicial Review	
NBS	5/1	Judicial Review - Affidavits	







