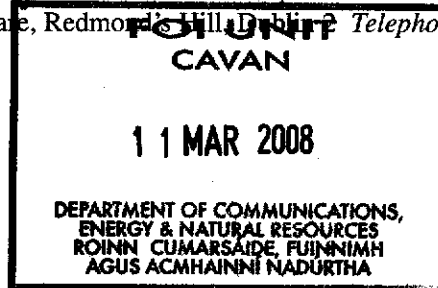




# THE SUNDAY TIMES

**London Office:** 1 Pennington Street, London E98 1ST Telephone: 44 207-782 5000 Fax: 44 207-782 5765  
**Dublin Office:** 4th Floor, Bishop's Square, Redmond's Hill, Dublin 2 Telephone: (01) 479 2424 Fax: (01) 479 2421



05/03/08

Dear Sir/Madam,

Under the Freedom of Information Act I would like access to copies of the following records.

1. Results of all audits of department computers using software (such as PixAlert) in 2006, 2007 and 2008. Please include any statistics that show how many computers were found to contain inappropriate material. Please also include any records which show any disciplinary proceedings which arose from such audits.
2. Records showing how much the department spent on bottled water in 2006 and 2007 and in January and February 2008.
3. All correspondence and records of meetings between the minister and department officials and RTE over the proposed new broadcast bill.
4. Records showing any data protection breaches in the department in from January 2005 to present. If any data protection issues arose please include records on any inquiries into these.

Regards,

Mark Tighe

News Reporter  
Sunday Times  
+3531 4792449  
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mark.tighe@sunday-times.ie



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

27<sup>th</sup> March, 2008

Mr. Mark Tighe,  
News Reporter,  
The Sunday Times,  
4<sup>th</sup> Floor,  
Bishop's Square,  
Redmond's Hill,  
Dublin 2.

Dear Mr. Tighe,

I refer to the Freedom of Information request received in this office on 11<sup>th</sup> March, 2008 and the associated fee which was received in the FOI Unit on 27<sup>th</sup> March, 2008.

Your request has been circulated to 4 divisions with the Department and the following decision-makers have been nominated to deal with your request:

**Part 1: Records relating to Computer Audits. Ref. No: FOI/0023/2008**  
**Decision-maker: Ann Kissane, HR Division, Phone No. 01 6782173.**

**Part 2: Records relating to how much the Department spent on bottled water.**  
**Ref. No: FOI/0020/2008**  
**Decision-maker: Tracey Hall, Corporate Services, Phone No. 01 6782554.**

**Part 3: Records relating to the proposed new Broadcast Bill. Ref. No: FOI/0021/2008**  
**Decision-maker: Bill Morrissey, Broadcasting Policy Division, Phone 01 6783176.**

**Part 4: Records relating to Data Protection Issues. Ref. No: FOI/0022/2008**  
**Decision-maker: Joe Birthistle, Information Systems Division, Phone 01 6782205.**

The postal address for all of the above is 29 – 31 Adelaide Rd., Dublin 2.

A final decision on your request will normally be sent to you within 4 weeks of receipt of your request. This means that you can expect to receive your decision by the 11<sup>th</sup> April, 2008.

If you have not heard from us when the time allocated has expired, 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.

You should also be aware that you are entitled to a review of the decision if your request is refused, or if you are for any reason dissatisfied with the outcome of your request. The review is a full and new examination of the matter carried out by a more senior member of staff of this Department. In the event that you need to make an appeal, you can do so by writing to Mr. Frank O'Brien, FOI Unit, Department of Communications, Energy & Natural Resources, Elm House, Earlsvale Rd., Cavan. Please note that there is a charge for all appeals of FOI requests. This charge is currently €75.00. A reduced fee of €25.00 applies if you are the holder of a Medical Card.

Please note that the Department of Communications, Energy & Natural Resources has a policy of posting a summary of your request, your name and address and the subsequent reply on the Department's website for reference purposes.

Yours sincerely,

Mary Rabbitte  
FOI Unit  
PH: 01 6782903



Radio Telefís Éireann

Ón gCathaoirleach  
from the Chairman  
Mary Finan



Baile Átha Cl'ath 4, Éire  
Teileafón 01 208 3144  
Facsimhír 01 208 4532

Dublin 4, Ireland  
Telephone 01 208 3144  
Telefax 01 208 4532

3<sup>rd</sup> October 2006

Minister Noel Dempsey,  
Department of Communications, Marine and Natural Resources.

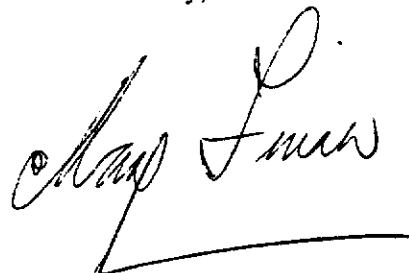
Dear Minister,

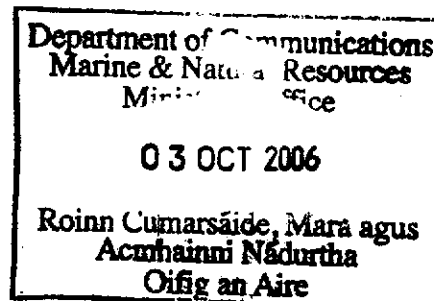
I enclose for your reference a copy of RTÉ's response to the e-consultation on the *General Scheme for the Broadcasting Bill 2006*.

As you are aware, this is an important aspect of RTÉ's involvement in the process but, as we discussed, we are also committed to working in as constructive a fashion as possible with your officials, and other appropriate arms of Government, in the interests of achieving good broadcasting legislation.

With every good wish.

Yours sincerely,

  
Mary Finan



## ***General Scheme for the Broadcasting Bill, 2006 RTÉ Response, October 2006***

### **A. General comments**

#### **Introduction**

RTÉ welcomes the publication of the *General Scheme for the Broadcasting Bill 2006*, for widespread consultation, as a precursor to the development of a Broadcasting Bill. In particular the consolidated approach adopted provides a good opportunity to update the legislation in what is a very challenging broadcasting environment and to future-proof it for the coming years; in this regard it is noted that the *General Scheme* is effectively silent on DTT.

RTÉ is fully committed to working with DCMNR, and all other relevant parties, in the development and progress of the Broadcasting Bill

The initial e-consultation period is brief for such a wide-ranging *General Scheme* and clearly RTÉ will be making more detailed comments following the publication of the draft Broadcasting Bill. This document highlights the proposed Heads where specific issues arises, in some instances seeking clarification, in others offering comments and/or suggested amendments.

#### **RTÉ's role**

Given RTÉ's role as a national Public Service Broadcaster (PSB), it is essential that it is independent of Government, from a legal point of view, and that it is seen to be so.

In many cases, the proposed Heads are closely based on precedents from legislation governing State-owned companies. In the case of RTÉ it is proposed the company will be established as a company limited by guarantee, but with the Minister as the sole member. For this reason, and for the critical reason that the independence of a national PSB must not only be real but must also be perceived, it may be that some of the provisions of the Heads, although suitable for other companies, are not suitable for RTÉ.

RTÉ's understanding of the reason it is proposed to convert it into a company is to ensure that the directors of the company will have all of the obligations and duties, which arise under company law. If that is to be the case, and given the onerous obligations on directors under company law, it is all the more important that the directors can discharge their duties without any risk of undue influence, and have the power to so discharge. RTÉ is fully committed to working closely with DCMNR, and all other appropriate bodies, to help ensure this understanding can be materialised in an appropriate way.

Many of the proposed changes are to be welcomed but the basic foundation of RTÉ in Irish life would be transformed if all of the proposals in the *General Scheme* were enacted. It is imperative that RTÉ's position as the national PSB is clearly enshrined in legislation. It would be of serious concern if there was any perception or creation of a state-controlled broadcaster, by commission or omission.

### **RTÉ's financial position**

This is addressed throughout the General Scheme but of particular significance is Head 100 – Accounts and Audit.

The Notes to Head 100 indicate the purpose of it is to require the two Companies (RTÉ and Teilifís na Gaeilge) to maintain financial records and accounts and to prepare budgetary estimates. This is a norm that one would expect of any company and certainly for one incorporated under the Companies Acts, as proposed, so one would expect to see this provision.

The Notes go on to amplify that the Head also requires the two Companies to prepare a statement of revenues and costs distinguishing as between commercial and public service activities. RTÉ has developed a method for doing this over the past number of years, thus the general intent of this second additional requirement is not in itself unexpected, particularly in the context of an organisation that has a blend of commercial and public sector activities and where there is a requirement to ensure transparency of the use of public funding. Given the requirement to take guidance from the BAI as regards cost accounting principles the mechanism for achieving compliance with this second request, while at the same time fully complying with internationally accepted financial reporting and accounting standards, requires further detailed clarification.

Taking both of the reporting requirements of Head 100 together, one would expect to see a requirement to maintain Accounts in accordance with the Companies Acts (and by extension internationally accepted accounting and auditing standards) and separately to prepare bespoke disclosures, aimed at ensuring effective compliance with the requirements of EU transparency directive. However an initial reading of Head 100 is that it does not deliver this and it has, probably inadvertently, intermingled, these two differing requirements.

Also of significant importance are tax related issues. In general terms it is clear that in order to avoid significant tax charges arising from enactment of the proposed Heads of the *General Scheme*, the Bill will either need to include a large number of specific tax exemptions in respect of the transition arrangements, or alternatively adopt a different approach and simply incorporate the current RTÉ entity as a company under the Companies Acts. In addition, while the former approach will work from an Irish perspective, the foreign tax implications will also need to be considered.

It is noted that transition provisions in relation to Teilifís na Gaeilge are not included in the *General Scheme* so they cannot be addressed, even at a high level, at this stage.

## **BAI role and position**

The *General Scheme* proposes the establishment of the BAI, a Contracts Committee and a Compliance Committee with a single Chief Executive who "...shall carry on and manage, and control generally..." the administration of all three bodies.

This proposal makes the operation of the Contract and Compliance Committees in an appropriately separate fashion impossible. It would also potentially open the Chief Executive to unfair and subtle pressures from Authority members in relation to work/projects being carried out by either of the two Committees at any particular point in time.

The Compliance Committee should be able to check how a broadcaster meets the terms of their contract quite independently of the Committee that awards the contract, initial or renewed, and can give derogations to it.

It would be more appropriate, and follow best practice, to have the Contract and Compliance Committees operate as two executive groups with independent administrations.

## **B. Comment on Legislative Structures in the *General Scheme***

The *General Scheme* operates on two levels. At one level individual policy changes are contained in each Head. At another level, policy is articulated by the structural change proposed by combinations of Heads.

In this section of the RTÉ Response some of the Heads are grouped and commented on to point out how in combination these Heads have an adverse effect upon the future of PSB.

### **Heads 24 to 27 (and Head 30): The Objectives, Functions and Duties of the BAI and its Statutory Committees**

### **Heads 70 to 75, 80 & 89: The new RTÉ Company**

### **Heads 78 & 89: The "Independence" of RTÉ and its directors**

The following are some general observations of concern on the effect of what are the two central proposals of this General Scheme; the establishment of a new broadcasting regulator (encapsulated in Heads 24 to 27 and Head 30) and the significant proposal to change RTÉ from a statutory corporation to that of a company under the Companies Acts where a member of the Government will be in law capable of exercising all the functions of the new company. At the end of this legislative re-working RTÉ is expected to emerge with its independence guaranteed (Heads 78 and 89).

The establishment of a new regulator is a laudable objective, necessary because of the complex set of issues that broadcasting now presents to Irish society and because the current legislative structure is not designed to regulate or promote broadcasting as it evolves over coming years. The proposal to ensure that RTÉ is subject to the governance provisions of the Companies Acts is again laudable in so far as that legislation imposes standards of corporate behaviour.

However, RTÉ is convinced that the sum total of the *General Scheme* on both of these fronts is to create a form of broadcasting that is not so much PSB as State-controlled broadcasting and, in so far as it imposes a regime of control either by the State itself or by an over-empowered regulator, is a retrograde and unnecessary step.

It is imperative that due consideration is given to this concern. The enactment of the main thrust of the *General Scheme* will give Central Government close control over the running and operation of RTÉ and allied with an excessive empowerment of a regulator (for which no reasons have been articulated) will lead to an unhealthy state of affairs. One immediate comparison that can be made is with the situation in Britain. There the BBC is a corporation established by Royal Charter and Channel Four is a statutory corporation. In neither case does the unmediated power of a government minister exist by way of a company in which he is the sole member.

The bare statement of "independence" contained in Head 78 sits somewhat isolated in the *General Scheme* (it specifically excludes RTÉ being independent in the management of its affairs). In fact it is not so much a statement of fact as it is devoid of any real meaning - sitting as it does in the *General Scheme* surrounded by numerous instances of statutory intervention either by the BAI or by the Minister. To illustrate this point, RTÉ has attached three appendices to this document. One shows the current legislative regime with respect to the operation and management of RTÉ, the other two set out the proposed roles of the BAI and Central Government respectively.

### C. Specific comments

These comments are relevant to individual Heads and for ease of reference they are inserted in black typeface following each Head on which we comment.

(The Heads are attached in red for ease of reference and are presented individually without notes.)

#### Head 6 - Body corporate and seal

1. The Authority is to be a body corporate, with perpetual succession and with the power to sue and be sued, and to acquire, hold and dispose of land and other property.
2. The Authority shall, as soon as may be after its establishment, provide itself with a seal.
3. The seal of the Authority shall be authenticated by the signature of--
  - (a) the chairperson of the Authority or another member of the Authority
  - (b) a member of the staff of the Authority, authorised by the Authority to act in that behalf.
4. Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.
5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorised by the Authority in that behalf.

6. The Contract Awards Committee and Compliance Committee shall perform their functions and exercise their powers under the seal of the Authority.

**As the Contracts Awards Committee and the Compliance Committee operate under the seal of the BAI it, in effect, means that they are the BAI.**

**This raises crucial issues of independence, transparency and the necessary distance in operation between the Contracts Awards Committee and the Compliance Committee.**

**There is no detail, equivalent to Head 90 (2), as to how the seal shall be authenticated.**

Head 9 - Terms and removal

1. There shall be paid to members of the Authority, Contract Awards Committee or Compliance Committee, out of moneys at the disposal of the Authority, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, from time to time determines.

2. Subject to the provisions of this Act, a member of the Authority, Contract Awards Committee or Compliance Committee shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.

3. The Minister shall cause a statement in writing specifying the terms of office and remuneration of the members of the Authority, Contract Awards Committee or Compliance Committee to be laid before both Houses of the Oireachtas.

4. A member of the Authority, Contract Awards Committee or Compliance Committee may at any time be removed from membership of the Authority, Contract Awards Committee or Compliance Committee by the Government if, in the Government's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the Authority, Contract Awards Committee or Compliance Committee of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.

5. A member of the Authority, Contract Awards Committee or Compliance Committee shall cease to be and shall be disqualified from being a member of the Authority, Contract Awards Committee or Compliance Committee where such member -

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,
- (d) is convicted of an offence involving fraud or dishonesty, or
- (e) is disqualified or restricted from being a director of any company.

6. Where a member of the Authority, Contract Awards Committee or Compliance Committee fails -

- (a) to attend three consecutive meetings of the Authority, the Contract Awards Committee or the Compliance Committee, and no satisfactory reason can be given for such non-attendance.
- (b) to make a declaration in accordance with the requirements of subsections (1) and (3) of section 21
- (c) to comply with the requirements of subsection (1) of section 22
- (d) to make a declaration in accordance with the requirements of Section 17 of the Ethics in Public Office Act 1995. the Minister may with the consent of the Government by order remove the member from office.

7. Every order under subsection (6) shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

8. If a member of the Authority, Contract Awards Committee or Compliance Committee dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the Authority, Contract Awards

Committee or Compliance Committee, the Government on the nomination of the Minister, may appoint a person to be a member of the Authority, Contract Awards Committee or Compliance Committee to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the Authority, Contract Awards Committee or Compliance Committee who occasioned the casual vacancy.

**The phrase "... *three consecutive meetings*..." – suggest it should be amended**

**See comment on Head 81**

Head 11 -

Exclusions from membership of the Authority, Contract Awards Committee or Compliance Committee

1. Where a member of the Authority, Contract Awards Committee or Compliance Committee is nominated as a candidate for election to the European Parliament or either House of the Oireachtas, he or she shall thereupon stand suspended from membership of the Authority, Contract Awards Committee or Compliance Committee and shall not be entitled to participate in meetings of the Authority, Contract Awards Committee or Compliance Committee or receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination and ending when such person is so regarded as not having been elected as the case may be.

2. Where a member of the Authority, Contract Awards Committee or Compliance Committee is-

- (a) is nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament; or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy, he or she shall thereupon cease to be a member of the Authority, Contract Awards Committee or Compliance Committee.

3. Where the person who is the chief executive officer or a member of the staff of the Authority is -

- (a) nominated as a member of Seanad Éireann; or
- (b) nominated as a candidate for election to either House of the Oireachtas or the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament

he or she shall thereupon stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and ending when such person ceases to be a member of either such House or a representative in that Parliament.

4. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament, shall, while so entitled or such a member, be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee or the chief executive officer or a member of staff of the Authority.

5. Without prejudice to the generality of subsection (3), that subsection shall be construed as prohibiting, inter alia, the reckoning of a period mentioned in that subsection as service with the Authority for the purposes of any superannuation benefits.

6. A person who holds employment or an interest in a broadcast undertaking, including but not limited to Radio Teilifís Éireann, Teilifís na Gaeilge, an undertaking holding a contract to broadcast under the Act of 1988, the Act of 1990 or the Act of 2001 or this Act, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.

7. A person who holds employment or an interest in an undertaking which publishes a newspaper in the State and which has ownership of an undertaking holding a contract to broadcast under the Act of 1988, the Act of 1990, the Act of 2001 or this Act, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.

8. A person who holds membership of the Authority shall be disqualified from becoming a member of the Contract Awards Committee or Compliance Committee.

9. A person who holds membership of the Contract Awards Committee shall be disqualified from becoming a member of the Authority or the Compliance Committee.

10. A person who holds membership of the Compliance Committee shall be disqualified from becoming a member of the Authority or the Contract Awards Committee.

**Advisory Committees, as defined in Head 16, should also be covered by exclusions identified under this Head.**

Head 12 - Meetings of the Authority, Contract Awards Committee or Compliance Committee

1. The Authority, Contract Awards Committee and Compliance Committee shall hold such and so many meetings as may be necessary for the due fulfilment of their functions.
2. The Minister may fix the date, time and place of the first meeting of the Authority, Contract Awards Committee and Compliance Committee.
3. Subject to the provisions of this Act, the Authority, Contract Awards Committee and Compliance Committee shall regulate their procedure and practice by rules made under this section.
4. Any rules made under this section shall be published on a website to be maintained by the Authority.
5. At a meeting of the Authority, Contract Awards Committee or Compliance Committee -
  - (a) the chairperson of the Authority, Contract Awards Committee or Compliance Committee shall, if present, be chairperson of the meeting,
  - (b) if and so long as the chairman is not present or the office of chairman is vacant, the members of the Authority, Contract Awards Committee or Compliance Committee who are present shall choose one of their number to be the chairman of the meeting.
6. At a meeting of the Authority, Contract Awards Committee or Compliance Committee, each member of the Authority, Contract Awards Committee or Compliance Committee present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Authority's, Contract Awards Committee's or Compliance Committee's view shall be determined by a majority of the votes of the members of the Authority, Contract Awards Committee or Compliance Committee present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.
7. The quorum for a meeting of the Authority shall not be less than seven.
8. The quorum for a meeting of the Contract Awards Committee shall not be less than five.
9. The quorum for a meeting of the Compliance Committee shall not be less than five.
10. The Authority, Contract Awards Committee or Compliance Committee may act notwithstanding one or more vacancies among its members.

**Sections 7, 8 and 9: Suggest amending by replacing numbers for a quorum to a percentage. Setting the quorums at defined numbers could lead to problems if there were a number of vacancies on the Authority or Committees at any one time.**

### Head 13 - Chief executive of the Authority

1. There shall be a chief executive officer of the Authority (who shall be known and is referred to in this Act as the 'chief executive').
2. The chief executive shall carry on and manage, and control generally, the administration of the Authority, Contract Awards Committee and Compliance Committee and perform such other functions (if any) as may be determined by the Authority.
3. Subject to subsections (5) and (6), the chief executive shall be appointed by the Authority with the consent of the Minister.
4. The chief executive may be removed from office by the Authority with the consent of the Minister for stated reasons.
5. The Minister may, before the establishment day, designate a person to be appointed to be the first chief executive.
6. If, immediately before the establishment day, a person stands designated by the Minister under subsection (5), the Authority shall appoint that person to be the first chief executive.
7. The chief executive shall hold office under a written contract of service (which contract may be renewed) for such period as is specified in the contract, upon and subject to such terms and conditions (including terms and conditions relating to superannuation) as are so specified, being terms and conditions which are determined by the Authority with the consent of the Minister given with the concurrence of the Minister for Finance and shall be paid out of moneys at the disposal of the Authority.
8. The chief executive shall not hold any other office or employment or carry on any business without the consent of the Authority.
9. The chief executive shall furnish the Authority with such information (including financial information) in relation to the performance of his or her functions as the Authority may from time to time require.
10. The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Authority as may, from time to time, be designated for that purpose by the Authority.

**Section 2:** states that the Chief Executive "...shall carry on and manage, and control generally..." the administration of all three bodies. The role of the Chief Executive appears to be defined as all pervasive and could place the office-holder in difficult conflict of interests/confidentiality situations and make the operation of 'Chinese Walls' between the Contract and Compliance Committees impossible.

**Section 5:** On what basis will the Minister designate a person to be the first Chief Executive? A public competitive selection process should be stipulated.