

FOI38/2008

20 June 2008

Eames Solicitors  
2 Malt House Square  
Smithfield,  
Bow Street  
Dublin 7.

Attn Mr. Aidan Eames

Dear Mr. Eames

I refer to your request dated 15 May 2008 under the Freedom of Information Act 1997-2003 for copies of reports which relate to telecommunications assets of the State or State owned bodies, one of which relates to 'Project Dingle'.

I have identified one report entitled 'Potential for Enhancing and Augmenting Semi State Telecommunication Assets'. I would add that I can only address the question of reports as regards this Department and its related State bodies.

I, as the decision maker have decided to refuse access to the report under sections 20, 21, 26 and 27 of the Freedom of Information Act 1997 – 2003 on the basis that your request is exempted under these sections. I have detailed the sections hereunder.

**Exemption explained.**

Section 20(1) (a) of the Act exempts records relating to the deliberative processes by the public body concerned.

Section 21(1)(a) provides for the exemption of records from release which may prejudice the effectiveness of tests examination, investigations, inquiries or audits conducted by or on behalf of a public body.

Section 21(1) (b) provides for the exemption of records from release which may have a significant adverse effect on the performance by a public body of any of its core functions.

Section 21(1) (c) exempts records that may disclose positions taken or to be taken or plans, procedures, criteria or instructions used or followed, or to be used or followed for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or a public body.

Section 26(1) (b) provides for the exemption of records from release that was given by third parties in confidence and in the understanding that they would be treated as confidential. Therefore, the Department has an equitable duty of confidence.

Section 27(1) (b) exempts commercially sensitive information.

Section 27(1) (c) exempts records relating to information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

In reaching my decision I have taken the following public interest factors into account.

Factors in favour of disclosure:

1. The right of the public to have access to information.
2. The accountability of administrators and scrutiny of decision making process.
3. There is a general interest in the disclosure of the record which relates to issues affecting the wider community and enable proper scrutiny of the process of decision making which would fully inform the public of the facts.

Factors in favour of non disclosure:

1. Need for the Department to be able to conduct its deliberation process on matters of importance.
2. Release of the record would impair the integrity and viability of the decision making process without any corresponding benefit to the public.
3. Need to preserve confidentiality having regard to the subject matter.
4. Need for the Department as policy maker of the Telecommunications sector to secure sound advice in exercising this role and not to be impaired in the making of future decision by the release of the record.
5. The need to avoid serious damage to the proper working of government at the highest level.
6. There is a public interest in maintaining the confidentiality of commercially sensitive information.
7. The details mentioned in the document are clearly prima facie exempt within the category 'commercially sensitive information'
8. There is a public interest in not encroaching on the protection afforded by the Act to records which the Act recognises as containing sensitive material which is protected under one or more Sections.
9. There is a public interest in the Department being able to continue to provide advice to the Minister and the Government on key policy matters.
10. There is a public interest in the Department being able to make informal decision in the course of carrying out its functions and in being able to maintain the confidentiality of their deliberative process, particularly where those deliberative processes relate to ongoing negotiations. In this case ongoing work relative to the future development of electronic communication in Ireland.

In my opinion of the balance of the public interest lies against the release of the reports.

**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, FOI Unit, Department of Communications, Energy & Natural Resources, Elm House, Earlsvale Road, Co. 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 Dept. Communications, Energy & 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.

Yours sincerely,

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Marian B Salmon  
Decision Maker



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

28/05/2008

Mr. Aidan Eames  
Eames Solicitors  
2 Malt House Square,  
Smithfield,  
Bow St.,  
Dublin

FOI Request Reference: FOI/2008/38

Dear Mr. Eames,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 23/05/2008 in relation to copies of reports which relate to telecommunications assets of the state or state owned bodies. The application was received along with the associated fee. *Chá feidhm*

The officer handling your request will be Ms Marian Salmon, Communications & Broadcasting - Communications Development Division, Department of Communications, Energy and Natural Resources, 016782694

You can expect to receive your decision by the 23/06/2008.

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,

*Seána McGearty*  
Seána McGearty

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

Phone: 01 6782902  
Email: [FOI.Unit@dcenr.gov.ie](mailto:FOI.Unit@dcenr.gov.ie)

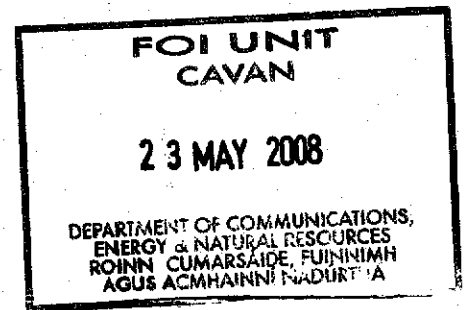


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1022 Four Courts

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



**Re: Request ID: 365**  
**Date: 22<sup>nd</sup> May 2008**

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Dear Ms. Rabbitte,

We refer to your letter of 20<sup>th</sup> May last and enclose our cheque for €15.00 payable to the Department of Communications, Energy and Natural Resources in respect of this FOI request.

Yours sincerely,

**Aidan Eames**  
**Eames Solicitors**



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

20<sup>th</sup> May, 2008

Mr Aidan Eames,  
Eames Solicitors,  
2 Malt House Square,  
Smithfield,  
Bow St.,  
Dublin 7.

FOI Request Reference: RequestID: 355

Dear Mr Eames,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 20<sup>th</sup> May, 2008 requesting copies of reports which relate to telecommunications assets of the state or state owned bodies.

An application fee must accompany all FOI requests for non-personal records, and your request cannot be processed until the fee has been submitted. The application fee is €15.00 or a reduced fee of €10.00 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 may be made by way of bank draft, money postal order, or personal cheque made payable to Department of Communications, Energy and Natural Resources.

On receipt of the fee, an acknowledgement letter will issue outlining details of when a decision on the request can be expected, and the contact details of the person handling the application.

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



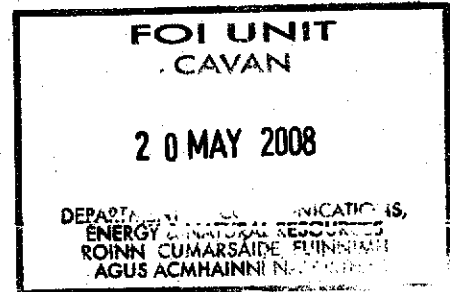
EAMES  
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Request EO 355

2 Malt House Square, Smithfield, Bow Street, Dublin 7.  
+ 353 (1) 872 5155 + 353 (1) 872 5664 info@eames.ie www.eames.ie

1022 Four Courts

The Freedom of Information Officer  
Department of Energy Communications and Natural Resources  
Mespil Road  
Dublin 4



**Date:** 15<sup>th</sup> May 2008  
**Re:** Atlantic Broadband Communications Limited

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Dear Sirs,

We act for Atlantic Broadband Communications Limited and hereby request pursuant to the Freedom of Information Act a copy of the report or reports in relation to telecommunications assets of the state or state owned bodies, one of which report we understand is also known as or relates to "Project Dingle".

Yours faithfully,

**Aidan Eames**  
Eames Solicitor