

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

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

Our Ref: FOI38/2008

11 July 2008

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

Dear Mr. Eames

I refer to your appeal on behalf of Atlantic Broadband Communications Limited of 25 June 2008 under the Freedom of Information Acts 1997-2003 for a review the earlier decision of this Department of 20 June 2008 regarding your request for copies of reports which relate to telecommunications assets of the State or State owned bodies, one of which relates to 'Project Dingle'.

I am a more senior member of the staff of this Department than the person who made the decision of 20 June 2008. This review decision is an entirely new and separate decision on your request, and is explained below.

We have identified one report entitled 'Potential for Enhancing and Augmenting Semi State Telecommunication Assets'.

Section 20 (1) (a)

The decision of 20 June 2008 refused the documentation being sought under Section 20.

I have reviewed the decision and am of the view that this report should not be released as it is part of a deliberative process.

Section 21 (1) (a)

The decision of 20 June 2008 refused the documentation being sought under Section 21 (1) (a).

I have reviewed the decision and am of the view that the release of this report could prejudice the effectiveness of inquiries by this Department.

Section 21 (1) (b)

The decision of 20 June 2008 refused the documentation being sought under Section 21 (1) (b).

I have reviewed the decision and am of the view that the release of this report could have a significant adverse effect on the performance of this Department in carrying out its functions.

Section 21 (1) (c)

The decision of 20 June 2008 refused the documentation being sought under Section 21 (1) (c).

I have reviewed the decision and am of the view that the release of this report would disclose positions and plans in relation to negotiations being carried on or to be taken by this Department.

Section 26 (1) (b)

The decision of 20 June 2008 refused the documentation being sought under Section 26 (1) (b).

I have reviewed the decision and am of the view that this report should not be released as it was sought and provided on a strictly confidential basis.

Section 27 (1) (b)

The decision of 20 June 2008 refused the documentation being sought under Section 27 (1) (b).

I have reviewed the decision and am of the view that this report should not be released as it is commercially sensitive.

Section 27 (1) (c)

The decision of 20 June 2008 refused the documentation being sought under Section 27 (1) (c).

I have reviewed the decision and am of the view that this report should not be released as its disclosure could prejudice the outcome of contractual or other negotiations.

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:

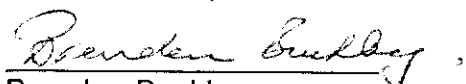
1. Need for the Department to be able to conduct a deliberative process.
2. Release of the record would impair the integrity and viability of the decision making process without any corresponding benefit to the public.
3. Need to preserve confidentiality having regard to the subject matter.
4. Need for the Department as policy maker to secure sound advice in exercising this and other roles.
5. The need to avoid serious damage to the proper working of government.
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 the public interest is best served by the non-release of this report.

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



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

10/07/2008

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 the appeal you have made under the Freedom of Information Acts, 1997 and 2003 on the decision taken regarding your recent FOI request concerning, Requesting copies of reports which relate to telecommunications assets of the state or state owned bodies..

Your appeal was received in the FOI Unit on the 26th June 2008 along with the associated fee. You can expect a decision on your appeal by the 17th July 2008.

A full and new examination of the matter will be carried out by Mr. Brendan Buckley, Communications (Development) and Electronic Commerce. The Internal Reviewer can be contacted at 016782955.

If you are not satisfied with the outcome or if you have not received a reply within the designated timeframe, you are entitled to apply for a further review by the Information Commissioner.

Any further queries please contact the FOI Unit.

Yours sincerely,

Seána McGearty

FOI Unit
Elm House,
Earlsvale Rd.,
Cavan

Phone: 01 6782902
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FOI Unit
Department of Communications, Energy and Natural Resources
Elm House
Earlsvale Road
Cavan

**FOI UNIT
CAVAN**

26 JUN 2008

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

Re: FOI 138/2008
Our Client: Atlantic Broadband Communications Limited
Date: 25th June 2008

Dear Sirs,

We wish to appeal the decision notified by letter dated 20th June 2008 attached.

We attach herewith our cheque in the sum of €75.00 for processing the appeal. The FOI request relates to all notes and memoranda including the report mentioned.

Yours faithfully,


Eames Solicitors

Aidan B. Eames Orla Coyne

Roisin Byrne Declan McNulty Caroline Lowey Gavin Driscoll Paul Martin Triona Price