



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

17th June 2008

Mr Fionnan Sheahan
Political Correspondents Room
Leinster House
Kildare Street
Dublin 2.

REFERENCE: Request Number: FOI/2008/35

Dear Mr Sheahan

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for records held by this Department. You requested access to the following records "All briefing documents/notes/material produced for the presentation to a new Minister, if appointed, following the announcement of a new cabinet on May 7th".

I have made a final decision to part grant your request on 17th June 2008. If you have any queries regarding this correspondence you can contact me by telephone at 01 6782118.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. a schedule of all of the records covered by your request;
2. concerning records to which access is granted, an explanation and a statement of the arrangements for this access, its form and the fee required to be paid;
3. concerning records to which access is denied, an explanation of the relevant findings; and
4. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these four parts in turn.

1. Schedule of records

A schedule is attached at the end of this letter. It shows the documents that this Department considers relevant to your request. It also gives you a summary and overview of the decision as a whole. The schedule describes each document, and indicates whether the document is released in full, released with deletions or not released. The schedule refers to the sections of the FOI Act which apply to prevent release. As to these documents, the schedule also provides brief reasons for the decision which are meant to supplement the fuller and more detailed explanation given under heading 3 below.

2. Access Arrangements

You have sought access to the records by means of photocopies, and I consider this an appropriate form of access in this case. Accordingly, the records described as released in full or released with deletion are now enclosed.

3. Findings, particulars and reasons for decisions to deny access.

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. I have set out beneath the relevant sections of the Act which relate to your request and form the basis for my decision not to release parts of some records.

Section 19(1) (a)

19. (1) A head shall refuse to grant a request under section 7 if the record concerned-

(a) has been, or is proposed to be, submitted to the Government for their consideration by a Minister of the Government or the Attorney General and was created for that purpose

This section has been applied to:

- Record 4, page 24: Information relating to the East West Interconnector that is proposed to be submitted to Government
- Record 6, pages 3, 4 and 5: Information relating to the Silvermines Rehabilitation Project that is proposed to be submitted to Government

Section 20 (1)

20. (1) A head may refuse to grant a request under section 7 if-

(a) the record concerned contains matter relating to the deliberative processes of a public body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes), and

(b) the granting of the request would, in the opinion of the head, be contrary to the public interest

This section has been applied to:

- Record 3, page 11: A record containing matter relating to the deliberative processes of this Department in relation to the Broadcasting Complaints Commission
- Record 4, page 4: A record containing matter relating to the deliberative processes of this Department in relation to Sustainable Energy Ireland

Section 21 (1)

21. (1) A head may refuse to grant a request under section 7 if access to the record concerned could, in the opinion of the head, reasonably be expected to-

(a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of a public body or the procedures or methods employed for the conduct thereof,

(b) have a significant, adverse effect on the performance by a public body of any of its functions relating to management (including industrial relations and management of its staff), or

(c) 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.

(2) Subsection (1) shall not apply in relation to a case in which in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under section 7 concerned

This section has been applied to:

- Record 4, page 19: A record containing matter relating to the functions and negotiations of public bodies concerned with the transfer of transmission assets that could have a significant adverse effect on the performance by the bodies of functions relating to management (including industrial relations and management of staff), and could disclose positions, plans, criteria or instructions relating to negotiations
- Record 4, pages 48 and 49: A record containing matter relating to the functions and negotiations of Bord na Móna that could disclose positions, plans, criteria or instructions relating to negotiations

Section 22 (1) (a)

22. (1) A head shall refuse to grant a request under section 7 if the record concerned-

(a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,

This section has been applied to:

- Record 6, page 10: A record containing matter to which legal professional privilege applies relating to advice regarding the former mines at Ballingarry/Slieveardagh.

Section 26 (1)

26. (1) Subject to the provisions of this section, a head shall refuse to grant a request under section 7 if-

(a) the record concerned contains information given to a public body in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body, or

(b) disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) of the Third Schedule of an enactment specified in that Schedule) or otherwise by law.

This section has been applied to:

- Record 4, page 22: A record containing matter obtained in confidence from Eirgrid disclosure of which would constitute a breach of a duty of confidence
- Record 4, pages 33, 35, 36 and Appendix 2: A record containing matter obtained in confidence from Bord Gáis Éireann disclosure of which would constitute a breach of a duty of confidence
- Record 4, pages 47, 48, 49 and 50: A record containing matter obtained in confidence from Bord na Móna disclosure of which would constitute a breach of a duty of confidence

Section 27 (1)

27. (1) Subject to subsection (2), a head shall refuse to grant a request under section 7 if the record concerned contains-

- (a) trade secrets of a person other than the requester concerned,
- (b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or
- (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

This section has been applied to:

- Record 4, page 22: A record containing matter relating to Eirgrid that is commercially sensitive
- Record 4, pages 33, 35, 36 and Appendix 2: A record containing matter relating to Bord Gáis Éireann that is commercially sensitive

- Record 4, pages 47, 48, 49 and 50: A record containing matter relating to Bord na Móna that is commercially sensitive
- Record 5, page 12: A record containing trade secrets and commercially sensitive information relating to the post office network and An Post financial services
- Record 6, pages 4 and 5: A record containing matter relating to the Silvermines Rehabilitation Project the disclosure of which could prejudice the outcome of negotiations with the owner of land

Section 28 (1)

28. (1) Subject to the provisions of this section, a head shall refuse to grant a request under section 7 if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

This section has been applied to:

- Record 6, pages 4 and 5: A record containing matter relating to the Silvermines Rehabilitation Project the release of which would involve the disclosure of personal information

Section 31 (1)

31. (1) A head may refuse to grant a request under section 7 in relation to a record (and, in particular, but without prejudice to the generality otherwise of this subsection, to a record to which subsection (2) applies) if, in the opinion of the head-

(a) access to the record could reasonably be expected to have a serious adverse affect on the financial interests of the State or on the ability of the Government to manage the national economy,

(b) premature disclosure of information contained in the record could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the record would involve disclosure of the information that would, in all the circumstances, be premature, or

(c) access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

This section has been applied to:

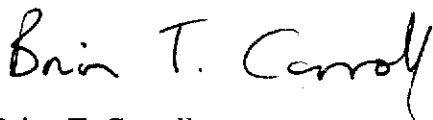
- Record 4, page 22: A record containing matter relating to Eirgrid the disclosure of which would fail to protect its financial and economic interests
- Record 4, pages 33, 35, 36 and Appendix 2: A record containing matter relating to Bord Gáis Éireann disclosure of which would fail to protect its financial and economic interests

- Record 4, pages 47, 48, 49 and 50: A record containing matter relating to Bord na Móna disclosure of which would fail to protect its financial and economic interests

4. 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, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, 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 the Department of Communications, Energy and 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/Body.

Yours sincerely



Brian T. Carroll
Principal Officer

FOI Request Reference: FOI/2008/35

Schedule of Records: Summary of Decision Making

Rec. No	Brief description and date of record	File Ref	No. of pages	Decision: Grant/Part Grant/Refuse	Basis of Refusal: Section of Act	Reason for Decision	Record Edited/ Identify Deletions
1	Final Composite Brief Administrative Budget 17 th April 2008		12	Grant			
2	Inland Fisheries Composite Brief 16 th April 2008		16	Grant			
3	Broadcasting Sector Composite Final Brief 17 th April 2008		28	Part Grant	20(1)	Record contains matters relating to the deliberative process of a public body	Page 11 3 lines edited
4	Energy Sector Composite Final Brief 16 th April 2008		55	Part Grant	20(1)	Record contains matters relating to the deliberative process of a public body	Page 4 6 lines edited
					21(1)(b)(c)	Material relates to negotiations of a public body	Page 19 14 lines edited
					26 (1)(a)(b) 27(1)(b)	Information obtained in confidence Commercially sensitive information	Page 22 4 lines edited

Rec. No	Brief description and date of record	File Ref	No. of pages	Decision: Grant/Part Grant/Refuse	Basis of Refusal: Section of Act	Reason for Decision	Record Edited/ Identify Deletions
					31(1)(a) (b)(c)	To protect the economic and financial interest of the state and public bodies	
					19(1)(a)	Information relates to matter that is proposed to be submitted to Government	Page 24 12 lines edited
					26 (1)(a)(b) 27(1)(b) 31(1)(a) (b)(c)	Information obtained in confidence Commercially sensitive information To protect the economic and financial interest of the state and public bodies	Page 33 5 lines edited
					As above	As above	Page 35 5 lines edited
					As above	As above	Page 36 5 lines edited
					As above	As above	Page 47 2 lines edited
					21(1)(c)	Material relates to negotiations of a public body	Page 48 15 lines edited

Rec. No	Brief description and date of record	File Ref	No. of pages	Decision: Grant/Part Grant/Refuse	Basis of Refusal: Section of Act	Reason for Decision	Record Edited/ Identify Deletions
					26 (1)(a)(b) 27(1)(b) 31(1)(a) (b)(c)	Information obtained in confidence Commercially sensitive information To protect the economic and financial interest of the state and public bodies	Page 48 15 lines edited
					21(1)(c) (a and b) 26 (1)(a)(b) 27(1)(b) 31(1)(a) (b)(c)	Material relates to negotiations of a public body Information obtained in confidence Commercially sensitive information To protect the economic and financial interest of the state and public bodies	Page 49 11 lines edited
				As above	As above	As above	Page 50 4 lines edited
				26 (1)(a)(b) 27(1)(b) 31(1)(a) (b)(c)	Information obtained in confidence Commercially sensitive information To protect the economic and financial interest of the state and public bodies	Information obtained in confidence Commercially sensitive information To protect the economic and financial interest of the state and public bodies	Appendix 2 3 Lines edited

Rec. No	Brief description and date of record	File Ref	No. of pages	Decision: Grant/Part Grant/Refuse	Basis of Refusal: Section of Act	Reason for Decision	Record Edited/ Identify Deletions
5	Communications Sector Composite Final Brief 16 April 2008		14	Part Grant	27 (1a) 27 (1b)	Trade secrets Commercially sensitive information	Page 12. 6 lines edited
6	Natural Resources Composite Final Brief 16 April 2008		14	Part Grant	19(1) (a)	Information relates to matter that is proposed to be submitted to Government	Page 3 6 lines edited
					19(1)(a) 27(1)(c) 28(1)	As above Disclosure could prejudice outcome of negotiation process with owners of land Release would result in disclosure of personal information	Page 4 35 lines edited
					As above	As above	Page 5 20 lines edited
					22(1)(a)	Legal professional privilege	Page 10 20 lines edited



20th May, 2008

Mr Fionnan Sheahan
Political Editor,
Irish Independent
Leinster House,
Kildare Street,
Dublin 2,

FOI Request Reference: FOI/2008/35

Dear Mr. Sheahan,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 13th May, 2008 in relation to briefing notes prepared for the Cabinet reshuffle 7th May, 2008. The application was received along with the associated fee.

The officer handling your request will be Ms Susan Lowen, Department of Communications, Energy & Natural Resources, Secretary Generals Office, 29 – 31 Adelaide Rd., Dublin 2. She can be contacted at 01 6782032

You can expect to receive your decision by the 11th June, 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.

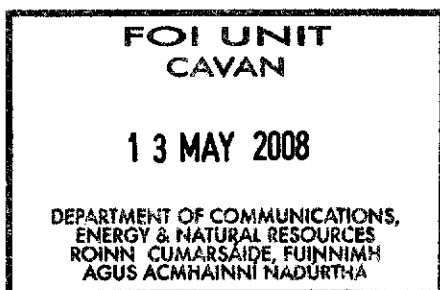
Please note the Department of Communications, Energy and Natural Resources has a policy of posting a summary of non-personal requests and decisions on the Departments website for reference purposes.

Yours sincerely,


Mary Rabbitte

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

Phone: 01 6782903



Political Correspondents Room,
Leinster House,
Kildare Street,
Dublin 2.

FAO: Freedom of Information Officer,
Department of Communications,
29-31 Adelaide Road,
Dublin 2.

Wednesday, May 7th, 2008.

Dear Sir / Madam,

In accordance with Section 7 of the Freedom of Information Acts 1997 and 2003, I wish to request access to the following records which I believe to be held by your Office:

All briefing documents/notes/material produced for the presentation to a new Minister, if appointed, following the announcement of a new cabinet on May 7th.

My preferred means of accessing these records is by post. Please find enclosed a €15 cheque to cover the FOI request.

Regards,

Fionnan Sheahan
Political Editor
Irish Independent
01 6183018
086-8287600
politicaldesk@gmail.com