



23rd July, 2010

Mr. Andrew Clarke,
McKeever/Rowan Solicitors,
5 Harbourmaster Place,
International Financial Services Centre,
Dublin1.

FOI Request Reference: FOI/2010/15

Dear Mr. Clarke,

I refer to your appeal received in the FOI Unit on 1st July, 2010 in relation to the request listed above, under the Freedom of Information Acts, 1997 and 2003.

I wish to acknowledge receipt of your correspondence dated 21st July, 2010 concerning the formal withdrawal of your request from the Department. The review fee of €75.00 will be returned to you in the near future.

Yours sincerely,

M. Rabbitte.

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

Phone No. 01 6782903

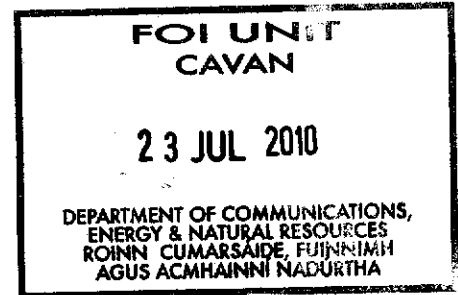
McKR

McKEEVER | ROWAN
S O L I C I T O R S

5 Harbourmaster Place,
International Financial Services Centre,
Dublin 1, Ireland.

Telephone: (+353-1) 6702990
Fax: (+353-1) 6702988
DX: 112006 (Talbot Street)
Email: info@mckr.ie
Web: www.mckr.ie

Mr. Frank O'Brien
FOI Unit
Dept of Communications, Energy & Natural Resources
Elm House
Earlsvale Road
Cavan



Our Ref: AC/CT

Your Ref: 00152010

Date: 21 July 2010

Re: Freedom of Information Act Application

Dear Mr. O'Brien

I refer to the above and my letter dated 24 June 2010.

I wish to withdraw the appeal of the decision of Mr. Barry Fulham and look forward to the return of €75.00 fee.

Yours faithfully

Andrew Clarke
McKEEVER ROWAN

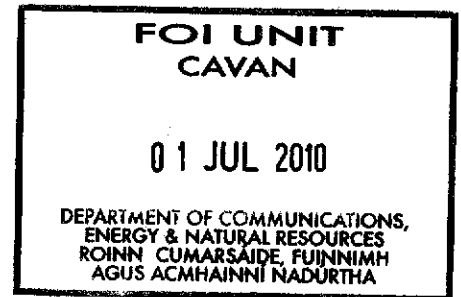
McKR

McKEEVER | ROWAN
S O L I C I T O R S

5 Harbourmaster Place,
International Financial Services Centre,
Dublin 1, Ireland.

Telephone: (+353-1) 6702990
Fax: (+353-1) 6702988
DX: 112006 (Talbot Street)
Email: info@mckr.ie
Web: www.mckr.ie

Ms Mary Rabbitte
FOI Unit
Dept of Communications, Energy & Natural Resources
Elm House
Earlsvale Road
Cavan



Our Ref: AC/CT

Your Ref: FPO/2010/15

Date: 30 June 2010

Re: Freedom of Information Appeal

Dear Mary

I refer to your letter of 28 June and to your telephone message and now attach cheque in the sum of €75.00 as requested.

Please confirm safe receipt.

I look forward to hearing from you.

Yours sincerely

Andrew Clarke
McKEEVER ROWAN

Enc



5th July 2010

McKeever Rowan Solicitors
5 Harbourmaster Place
International Financial Services Centre
Dublin

FOI Request Reference: FOI/2010/15

Dear Sir/Madam

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 records relating to the RTÉ Board and the Broadcasting Authority of Ireland.

Your appeal was received in the FOI Unit on the 1st July 2010 along with the associated fee. You can expect a decision on your appeal by the 22nd July 2010.

A full and new examination of the matter will be carried out by Mr Sean Griffin, Communications Development Division, 29-31 Adelaide Road, Dublin 2. The Internal Reviewer can be contacted at 01 6783202.

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,

Carmel Conaty
Carmel Conaty

FOI Unit
Elm House,
Earlsvale Rd
Cavan

Mary Rabbitte

From: FOI UNIT
Sent: 28 June 2010 15:50
To: 'info@mckr.ie'
Subject: FW: FOI/2010/15
Attachments: RequestInternalReviewFee.doc

Dear Sir,

I refer to my email beneath, incorrect attachment sent, please find correct attachment requesting the up-front fee.

Yours faithfully

*Mary Rabbitte,
FOI Unit,
DCENR,
Elm House,
Earlsvale Rd.,
Cavan.
01 6782903*

From: FOI UNIT
Sent: 28 June 2010 15:45
To: 'info@mckr.ie'
Subject: FOI/2010/15

Dear Sir,

In reply to your request for an internal review on your request dated 4th May, 2010, at the moment this request is not valid as the up-front fee of €75.00 has not been received. I have attached correspondence requesting the up-front fee and a hard copy of this letter will issue to you by post. I would appreciate if you forward us the upfront fee as soon as possible.

If you require further assistance with this matter please let me know.

Yours faithfully,

*Mary Rabbitte,
FOI Unit,
DCENR,
Elm House,
Earlsvale Rd.,
Cavan.
01 6782903*



28th June, 2010

McKeever/Rowan Solicitors,
5 Harbourmaster Place,
International Financial Services Centre,
Dublin 1.

FOI Request Reference: FOI/2010/15

Dear Sir/Madam,

I refer to your appeal letter regarding the above request, which was received in the Department on 28th June, 2010.

I am to advise you that an application fee must accompany all FOI appeal requests for non-personal records, and your request cannot be processed until the fee has been submitted. The application fee is currently €75.00 and a reduced fee of €25.00 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, Elm House, Earlsvale Rd., Cavan..

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

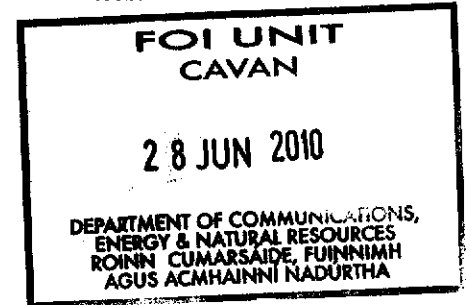
Yours faithfully,

Mary Rabbitte

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

Phone: 01 6782903

Mr. Frank O'Brien
FOI Unit
Dept of Communications, Energy & Natural Resources
Elm House
Earlsvale Road
Cavan



Our Ref: AC/CT

Your Ref:

Date: 24 June 2010

Re: Freedom of Information Act Application

Dear Mr. O'Brien

I am writing in relation to the FOI request of the 4th of May last (your FOI request reference 00152010) and to the letter received at our offices on the 8th of June last from your colleague Mr. Barry Fulham.

I wish to appeal Mr. Barry's decision in relation to the information supplied and to the interpretation taken of the FOI request submitted.

I repeat the substantive points of the original FOI request of the 4th of May last:

"I am writing to request access under Section 7 of the Freedom of Information 1997 and Freedom of Information (Amendment) Act 2003 to the information detailed below between the periods June 2007 and December 2009 in relation to the RTÉ Board and the Broadcasting Authority of Ireland: Note: This request does not relate to information received by the Public Appointments Service in relation to these bodies.

- 1. A complete list of the applicants (both successful and unsuccessful) to the Department of Communications, Energy and Natural Resources (DCENR) for appointment to the above bodies and to the committees and sub-committees of these bodies.*
- 2. All documentation received by the DCENR from parties expressing interest to serve on these bodies and/or their committees and sub-committees. Note: Cover letters in this regard will suffice in cases where a conflict under Section 28 of the Acts relating to personal information may be deemed to apply.*
- 3. All documentation from the DCENR to successful applicants to the above bodies and to the committees and sub-committees of these bodies.*

4. *All documentation pertaining to the general managerial, governance, industry, occupational experience and academic qualifications of each successful appointee to the RTÉ Authority, Broadcasting Authority of Ireland and to the committees and sub-committees of these bodies. Note: In relation to matters that could be deemed to be covered by Section 28 of the Acts relating to personal information, I draw your attention to the decision taken in relation to the disclosure of information by the DCENR under FOI Request Reference FOI/2009/22.*
5. *All documentation used by the DCENR with regard to the criteria under which candidates' suitability was assessed for appointments to the above bodies and to their committees and sub-committees."*

The majority of the information supplied by Mr. Barry is not relevant to the FOI requests made above. While Mr. Barry has provided some detail in relation to a number of individuals appointed by Minister Ryan (hereinafter referred to as "the Minister"), outside of the recommendations of the Joint Committee on Communications, Energy and Natural Resources (JCCENR), to committees of the BAI as requested, no information outside of these recommended appointments has been provided on any appointments made by the Minister to the BAI itself or the RTÉ Board, including interim board appointments, between June 2007 and December 2009.

I request all details on all applicants, successful or otherwise, described above with the exception of those eight applicants recommended by the JCCENR to the Minister for appointment to either the RTÉ Board or to the BAI. This information was requested in the original FOI request. I refer you to section 6. (1), (2) of the FOI Act 1997.

I would ask that you note the timeframe covering the material requested. The FOI request for information relates to all appointments made by Minister Ryan to the RTÉ Board, all interim RTÉ Boards and to the Broadcasting Authority of Ireland and to the committees of these bodies outside of those names recommended by the Joint Committee on Communications, Energy and Natural Resources (JCCENR). This information is requested for the period June 2007 to 2009. This information was requested in the original FOI request. I refer you to section 6. (1), (2) of the FOI Act 1997.

I do not accept that points 1, 2, and 3 in the FOI request above conflict with section 28 of the FOI legislation nor that it is the intent of this section to prevent the detailing of information in this regard.

In relation to point 4, I accept that payment to those appointed is made by the relevant bodies, however, for the dates indicated in the FOI request of the 4th of May last, it is the Minister solely who both selected (on the advice of other parties or not) and made

appointments. It is the State that meets the payments of agreed salaries or stipends to both DCENR staff and to those appointed to the Boards/Authorities of public sector agencies. As such it clearly lies within the intent of the legislation to supply the information as requested. Again I refer to the disclosure of information under your reference FOI/2009/22.

In relation to point 5 above, no additional information is requested.

I do not accept that section 28 of the FOI Act 1997 covers the names of individuals in relation to the FOI request made. Mr. Barry's refusal to grant information in relation to his Schedule of Records, item 17 is contested.

Mr. Barry's extension of "personal information" to the areas detailed in the first paragraph on the second page of his letter is not considered to be the intent of section 28 of the 1997 FOI Act.

In relation to the RTÉ Board, Mr. Barry's assertion that the RTÉ Board was not established until September 1st 2009 is factually incorrect. While the current Board was established at that date, the information requested under FOI relates to all appointments made to the RTÉ Board, current, previous, interim or otherwise, from June 2007 to December 2009 by the Minister.

The term "applicants" in the FOI request submitted is used in the context of its normal accepted and commonplace meaning, i.e. as "someone who has applied for a job" (Chambers English Dictionary, Chambers Harrap Publishers Ltd. 2000). The term "applicants" in the FOI request of the 4th of May last relates to those who have been appointed by the Minister and to those who have been unsuccessful in appointment. Mr. Barry's interpretation of the term "applicant" is not accepted.

Normal practice in relation to those with an interest in serving on State Authorities, Bodies and Boards (interim or otherwise) and on the committees of these bodies directly appointed by Ministers is that they contact the relevant Minister to express their interest in serving. In rare and exceptional circumstances, a Minister may choose to contact an individual known to him/her to ask that they consider serving. If there are any cases in relation to the requested information of individuals contacted directly by the Minister in the absence of an application on their part, information on the names of these individuals, the dates on which they were contacted and the name of the person from the DCENR who contacted these individuals will be accepted.


Mr. Barry's assertion that relevant records are held solely in 3 referenced files is factually incorrect. My office holds copies of several applications made directly to the Minister and of the responses from the Minister and from his staff in relation to these applications. Across all government departments, communications from applicants to Ministers for appointment to State Boards/Bodies/Authorities and the committees thereof appointed directly by Ministers are filed and referenced as a matter of routine

and normal practice. I refer directly to section 6. (1), (2) of the FOI Act 1997 in this matter and provide this detail, although commonly understood, by way of assistance under section 7. (1) b.

Given the nature of the FOI requested information I am at a loss to understand why the request was detailed to a staff member at the Broadcasting Policy Division rather than to a member of staff who has knowledge of the requested information directed to the Minister during the timeframe specified and who has a knowledge of the filing system for such information. Should it be of assistance I can disclose to you the names of several such staff members serving in the Minister's immediate team who may have direct knowledge of the communications requested. The vast majority of applications made to serve in the areas of relevance were addressed directly to the Minister and as such were filed and processed by his immediate support staff.

Kindly detail your response time for addressing these matters.

Yours faithfully


McKEEVER ROWAN