

3 November, 2008

Mr Joe Mag Raollaigh  
RTE News  
Donnybrook  
Dublin 4

FOI Request Reference: FOI/2008/54

Dear Mr. Mag Raollaigh

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for records held by this Department concerning "Copies of all correspondence the Department holds pertaining to the effect the Corrib gas field will have on gas prices in this state when it comes on line. Also copies of correspondence relating to the effect of Corrib gas on the usage of the gas interconnector lines from this country, an on price per unit of gas, in the pre and post corrib phases".

I have made a final decision to refuse your request on 3 November, 2008. I am withholding all the records requested under a number of exemptions namely Section 20(1), Section 27(1)(b), Section 31(1)(c) Section 46 (2). Details are outlined beneath.

If you have any queries regarding this correspondence you can contact me by telephone at 01 6783134.

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. an explanation of the relevant findings concerning the records to which access is denied, and
3. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three 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 describes each document and refers to the sections of the FOI Act which apply to delay access to records.

The schedule also provides brief reasons for the decision which are meant to supplement the fuller and more detailed explanation given under heading 2 below. It also gives you a summary and overview of the decision as a whole.

## **2. 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. The relevant sections are as follows

**Section 20(1)**, a head may refuse to grant a request under section 7 if the record concerned contains matters relating to the deliberative process of the public body concerned (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,

I have decided that the release of certain records would not be in the public interest as they could impair a future decision to be taken by the CER.

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

Records contain commercially sensitive information and if released could reasonably be expected to result in a material loss or gain to the person to whom the information relates.

**Section 31 (1)(c)** A head may refuse a request under section 7 in relation to a record if in the opinion of the head access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

These records contain information which if released could be expected to result in an unwarranted benefit on loss to a person or class of persons.

**Section 46 (2)** Information is already available in the public domain. This record is currently the subject of public consultation by the Commission for Energy Regulator (CER) and is available to the public on the CER website.

## **3. Rights of appeal**

I wish to advise you that, if for any reason you are not satisfied with the outcome of your request, you are entitled to seek a review by appealing the decision. To appeal you need to write to the FOI Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Rd, Cavan, Co Cavan. You must make your appeal within 4 weeks of the date of this letter, but the making of a late appeal may be permitted in certain circumstances. Please note that an application fee for an appeal is currently €75.00.

Payment should be made by way of bank draft, money postal order, or personal cheque made payment to "Department of Communications, Energy and Natural Resources".

On receipt of the fee, you will be advised of when you can expect a decision on your appeal, and the contact details of the person handing the appeal.

Yours sincerely

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Eileen Walsh  
Electricity and Gas Regulation Division

20.—(1) A head may refuse to grant a request under *section 7*—Deliberations of public bodies.

(a) if the record concerned contains matter relating to the deliberative processes of the public body concerned (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,

and, without prejudice to the generality of *paragraph (b)*, the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make.

(2) *Subsection (1)* does not apply to a record if and in so far as it contains—

(a) matter used, or intended to be used, by a public body for the purpose of making decisions, determinations or recommendations referred to in *section 16*,

(b) factual (including statistical) information and analyses thereof,

(c) the reasons for the making of a decision by a public body,

(d) a report of an investigation or analysis of the performance, efficiency or effectiveness of a public body in relation to the functions generally or a particular function of the body,

(e) a report, study or analysis of a scientific or technical expert relating to the subject of his or her expertise or a report containing opinions or advice of such an expert and not being a report used or commissioned for the purposes of a decision of a public body made pursuant to any enactment or scheme.

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

(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.

(2) A head shall grant a request under *section 7* to which *subsection (1)* relates if—

(a) the person to whom the record concerned relates consents, in writing or in such other form as may be determined, to access to the record being granted to the requester concerned,

(b) information of the same kind as that contained in the record in respect of persons generally or a class of persons that is, having regard to all the circumstances, of significant size, is available to the general public,

(c) the record relates only to the requester,

(d) information contained in the record was given to the public body concerned by the person to whom it relates and the person was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or

(e) disclosure of the information concerned is necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment.

(3) Subject to *section 29*, *subsection (1)* does 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

31.—(1) A head may refuse to grant a request under *section 7* in Financial and relation to a record (and, in particular, but without prejudice to the economic interests of the State and generality otherwise of this subsection, to a record to which *subsec-* public bodies.

*tion (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.

(2) This subsection applies to a record relating to—

(a) rates of exchange or the currency of the State,

(b) taxes, revenue duties or other sources of income for the State, a local authority or any other public body,

(c) interest rates,

(d) borrowing by or on behalf of the State or a public body,

(e) the regulation or supervision by or on behalf of the State or a public body of the business of banking or insurance or the lending of money or of other financial business or of institutions or other persons carrying on any of the businesses aforesaid,

(f) dealings in securities or foreign currency,

(g) the regulation or control by or on behalf of the State or a public body of wages, salaries or prices,

(h) proposals in relation to expenditure by or on behalf of the State or a public body including the control, restriction or prohibition of any such expenditure,

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[No. 13.] *Freedom of Information Act, 1997.* [1997.]

Pt. III S.31 (i) property held by or on behalf of the State or a public body and transactions or proposed or contemplated transactions involving such property,

(j) foreign investment in enterprises in the State,

(k) industrial development in the State,

(l) trade between persons in the State and persons outside the State,

(m) trade secrets or financial, commercial, industrial, scientific or technical information belonging to the State or a public body and is of substantial value or is reasonably likely to be of substantial value,

(n) information the disclosure of which could reasonably be expected to affect adversely the competitive position of a public body in relation to activities carried on by it on a commercial basis, or

(o) the economic or financial circumstances of a public body.

(3) *Subsection (1)* does 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.

46.—(1) This Act does not apply to—

Restriction of Act.

(a) a record held by—

- (i) the courts,
- (ii) a tribunal to which the Tribunals of Inquiry (Evidence) Act, 1921, is applied, or
- (iii) a service tribunal within the meaning of section 161 of the Defence Act, 1954,

and relating to, or to proceedings in, a court or such a tribunal other than—

(I) a record that relates to proceedings in a court or such a tribunal held in public but was not created by the court or tribunal and whose disclosure to the general public is not prohibited by the court or the tribunal, or

(II) a record relating to the general administration of the courts or the offices of the courts or such a tribunal or any offices of such a tribunal,

(b) a record held or created by the Attorney General or the Director of Public Prosecutions or the Office of the Attorney General or the Director of Public Prosecutions (other than a record concerning the general administration of either of those Offices),

(c) a record relating to—

(i) a review under *section 34* or an investigation under *section 36*,

(ii) an audit, inspection or examination carried out by the Comptroller and Auditor General under the Comptroller and Auditor General Acts, 1923 and 1993, the Exchequer and Audit Department Acts, 1866 and 1921, or any other enactment, or

(iii) an investigation or examination carried out by the Ombudsman under the Ombudsman Act, 1980, other than—

(I) such a record that was created before the commencement of the review, investigation, audit, inspection or examination aforesaid, or

(II) a record relating to the general administration of the Office of the Commissioner, the Office of the Comptroller and Auditor General or the Office of the Ombudsman,

(d) a record relating to the President,

(e) a record relating to any of the private papers (within the meaning of Article 15.10 of the Constitution) of a member of either House of the Oireachtas or an official document of either or both of such Houses that is required by

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[1997.] *Freedom of Information Act, 1997. [No. 13.]*

the rules or standing orders of either or both of such Pt.V S.46 Houses to be treated as confidential, or

(f) a record relating to information whose disclosure could reasonably be expected to reveal or lead to the revelation of—

(i) the identity of a person who has provided information to a public body in confidence in relation to the enforcement of the criminal law, or

(ii) any other source of such information provided in confidence to a public body.

(2) Subject to *subsection (3)*, this Act does not apply to—

(a) a record that is available for inspection by members of the

public whether upon payment or free of charge, or  
(b) a record a copy of which is available for purchase or  
removal free of charge by members of the public,  
whether by virtue of an enactment (other than this Act) or otherwise.  
(3) A record shall not be within *subsection (2)* by reason only of  
the fact that it contains information constituting personal data to  
which the Data Protection Act, 1988, applies.

FOI Request Reference: 54/2008

Schedule of Records: Summary of Decision Making

Rec. No.	Brief Description and Date of Record	File Ref	No. of Pages	Relevant facts	Findings /conclusions (Public Interest Considerations if applicable)	Grant/refuse/part-grant	Basis of Refusal: Section of the Act	Record Edited/Identify Deletions
1	Email from Denis Cagney CER re Regulatory treatment of IC2 dated 11/07/08	POL/INFR A/Gas/4	1	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)  Record contains commercially sensitive information	Release could impair a future decision of the CER.  Disclosure could result in a material loss or gain to the persons to whom the information relates, or could	Refuse  Refuse	Sections 20 (1)  27 (1) (b)	

2	Letter from Michael Daly to Denis Cagney, CER dated 12/08/08	POL/INFR A/Gas/4	2	Record contains information which could be expected to result in an unwarranted benefit or loss to a person or class of persons	prejudice the competitive position of that person in the conduct of business	Disclose	Refuse	31(1) (c)			
3	Email and Memo from CER re Regulatory Treatment of IC2 Investment Costs	POL/INFR A/Gas/4	4	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)	Information is already in the public domain	Information is already in the public domain	Refuse	Section 46 (2) (a)	Sections 20 (1)		



5	Minutes of Meeting with CER dated 30 /09/08	POL/INFR A/Gas/4	2	<p>Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)</p> <p>Record contains commercially sensitive information</p> <p>Record contains information which could be expected to result in an unwarranted benefit or loss to a person or class of persons</p>	<p>Release could impair a future decision of the CER.</p> <p>Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business</p> <p>Disclosure could result in an unwarranted benefit or loss to a person or class of persons</p>	Refuse	Sections 20 (1)	27 (1) (b)	31 (1) (c)
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6	Presentation to Division by BGE/ Gaslink 7/10/08	POL/INFR A/Gas/4	34	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)  Record contains commercially sensitive information	Release could impair a future decision of the CER.  Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business	Refuse	Sections 20 (1)  27 (1) (b)  31 (1) (c)	
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7	Letter from Denis Cagney, CER to Michael Daly, Dept. dated 3/11/08	POL/INFR A/Gas/4	2	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)  Record contains commercially sensitive information	Release could impair a future decision of the CER.  Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business	Refuse	Section 20 (1)  27 (1) (b)  31 (1)(c)
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8	Draft letter to Denis Cagney, CER dated /11/08	POL/INFR A/Gas/4	2	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)	Release could impair a future decision of the CER.	Refuse	Section 20 (1)	
				Record contains commercially sensitive information	Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business		27 (1) (b)	
				Record contains information which could be expected to result in an unwarranted benefit or loss to a person or class of persons	Disclosure could result in an unwarranted benefit or loss to a person or class of persons		31 (1)(c)	

9	<p>Memorandum by Bernie Comey on Regulatory treatment of IC2 costs dated 13/11/08.</p>	<p>POL/INFR A/Gas/4</p>	<p>3</p>	<p>Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)</p> <p>Record contains commercially sensitive information</p> <p>Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business</p>	<p>Release could impair a future decision of the CER.</p> <p>Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business</p> <p>Disclosure could result in an unwarranted benefit or loss to a person or class of persons</p>	<p>Refuse</p>	<p>Sections 20 (1)</p> <p>27 (1) (b)</p> <p>31 (1) (c)</p>	
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10	Letter to CER re Regulatory Treatment of IC2 costs dated 15/11/08	POL/INFR A/Gas/4	2	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)	Release could impair a future decision of the CER.	Refuse	Section 20 (1)	
				Record contains commercially sensitive information	Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the competitive position of that person in the conduct of business		27 (1) (b)	
				Disclosure could result in a material loss or gain to the persons to whom the information relates, or could prejudice the	Disclosure could result in an unwarranted benefit or loss to a person or class of persons		31(1)(c)	

11	Extract from CER Document - Draft conclusions on transmission Tariff Harmonisation in Ireland and Northern Ireland 17/11/2008	POL/INFR A/Gas/4	6	competitive position of that person in the conduct of business Information is already available in the public domain	Information is already available in the public domain	Refuse	Section 46 (2) (a)	
12	Email from Denis Cagney to Michael Daly dated 17/10/ 2008	POL/INFR A/Gas/4	1	Record contains matter relating to the deliberative processes of the Commission for Energy Regulation (CER)	Release could impair a future decision of the CER.	Refuse	Section 20 (1)	

54/2008.

Due by 11/11/08.

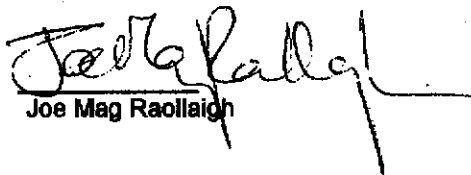
Joe Mag Raollaigh  
RTE News,  
Donnybrook  
Baile Átha Cliath 4  
087 2707816

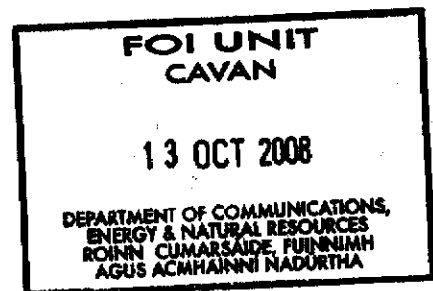
A chara,

Under the freedom of Information Act, I wish to get copies of all correspondence the Commission holds pertaining to the effect the Corrib gas field will have on gas prices in this state when it comes on line. I wish to get copies of correspondence relating to the the effect of Corrib gas on the usage of the gas interconnector lines from this country, and on price per unit of gas, in the pre and post corrib phases.

The period this requests covers if from 1/1/07 until the present. Enclosed is a <sup>RP</sup> cheque for €15.

Regards,

  
Joe Mag Raollaigh





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

22/10/2008

Mr Joe Mag Raollaigh  
RTE News  
Donnybrook,  
Dublin 4,

FOI Request Reference: FOI/2008/54

Dear Mr. Mag Raollaigh,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 13/10/2008 in relation to Corrib gas field. The application was received along with the associated fee.

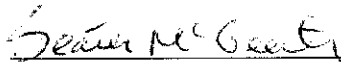
The officer handling your request will be Ms Eileen Walsh, Energy, Electricity and Gas Regulation Division, Department of Communications, Energy and Natural Resources, 016783134

You can expect to receive your decision by the 11/11/2008.

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

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)

Joe Mag Raollaigh  
RTE News,  
Donnybrook  
Baile Átha Cliath 4  
087 2707816

Request I.D.

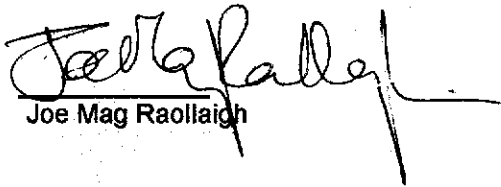
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A chara,

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The period this requests covers if from 1/1/07 until the present. Enclosed is a <sup>P.O.</sup>cheque for €15.

Regards,

  
Joe Mag Raollaigh

