



Department
for Environment
Food & Rural Affairs

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[name and contact details redacted]

Our ref: RFI 6239

9 May 2014

Dear [name redacted]

REQUEST FOR INFORMATION: REPORT BY FRONTIER ECONOMICS ON THE IMPACTS OF ENERGY INFRASTRUCTURE ON HOUSING PRICES

Thank you for your letter of 24 February in which you requested an internal review of the handling of the request for information relating to the Defra commissioned report by Frontier Economics on the impacts of energy infrastructure on housing prices. I apologise for the delay in replying to you.

The request was made by your colleague, [name redacted], but as you both represent [name of company redacted], for simplicity, 'you' and 'your' in this letter refer to [name of company redacted].

The terms of your request are:

- 1. I wish to request a full copy of this report including any appendices.*
- 2. I also want to request correspondence between relevant policy units in Defra and DECC concerning the report generated between 26/07/2013 and 14/12/2013. Please ensure your search for correspondence includes letters, emails, email attachments.*

We have handled your request for an internal review under the Environmental Information Regulations 2004 (EIRs).

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Rights Team in discussion with colleagues who handled your original request.

Summary

The conclusions of the internal review are that Defra was correct to withhold some information in response to your request of 24 December 2013 but that other requested information should have been disclosed. In addition, we have found that regulation 12(4)(a) applies to some of the information requested. I attach a document containing the information previously disclosed to you together with the additional information now being disclosed as a result of this internal review. The attached document indicates clearly the additional information being disclosed.

I set out below a fuller explanation of our decision.

Chronology

On 24 December 2013, you emailed the following request for information to Defra:

This is a request for information under the Environmental Information Regulations 2004.



I understand that DEFRA has commissioned Frontier Economics to write a report on the impacts of energy infrastructure on housing prices.

1. I wish to request a full copy of this report including any appendices.

2. I also want to request correspondence between relevant policy units in DEFRA and DECC concerning the report generated between 26/07/2013 and 14/12/2013. Please ensure your search for correspondence includes letters, emails, email attachments.

On 21 February 2014, Defra responded to your request for information disclosing some of the information that you had requested but withholding other information. The response is summarized below:

- disclosed: two pdf files containing some of the requested information;
- withheld: names and contact details of staff below Senior Civil Service (SCS) – exception at regulation 12(3) of the EIRs (personal data);
- withheld: some information that Defra considered to be outside the scope of the request;
- withheld: some information under regulation 12(4)(d) of the EIRs (material in the course of completion, to unfinished documents or to incomplete data)
- withheld: some information under regulation 12(4)(e) of the EIRs (*internal communications*).

On 24 February 2014, you emailed Defra requesting an internal review of the response to your request for information.

On 4 March 2014, Defra emailed you acknowledging your request for internal review and stated that we would aim to respond to your appeal within 20 working days of receipt of your request for internal review (i.e. by 24 March), but if it were not possible to reply by this date we would let you know the reason and keep you informed of when you may expect to receive a reply.

On 8 April 2014, Defra emailed you apologising for not writing sooner to inform you of the progress of the internal review and stating that, clearly, we had not been able to reply to you by 24 March. We added that, in accordance with the EIRs, we were extending the deadline for a further 20 working days (i.e. to 23 April 2014), but that we expect to be able to reply to you sooner than that date and could even be replying to you later that week.

On 29 April 2014, you emailed Defra asking for progress on the reply to the internal review because you had not yet received a reply.

On 1 May 2014, Defra emailed you apologising for the delay and stating that we hoped to be able to respond to you by the end of the following week (i.e. by 9 May 2014) but that if this were impossible we would let you know.

FOIA or EIRs

The information that you have requested is 'environmental information' as defined in regulation 2(1) of the EIRs and so your request falls under the EIRs.

Timeliness

We have considered whether Defra complied with the requirement in regulation 5(2) of the EIRs to respond to a requester 'as soon as possible and no later than 20 working days after the date of receipt of the request'. Defra received your request for information on 23 December 2014 and emailed its reply to you on 21 February 2014. Therefore, Defra had not sent its response within 20 working days of receiving your request and we did not inform you that we were extending the deadline for a further 20 working days. As you know, the reason for this delay is that your request

became lost in Defra and was not acted upon as soon as it should have been. Therefore, Defra has not complied with regulation 5(2) of the EIRs.

We have also considered whether Defra complied with the requirement in regulation 11(4) of the EIRs to reply to your request for internal review 'as soon as possible and no later than 40 working days'. Defra received your request for internal review on 24 February 2014 and so the 40 working day deadline was 23 April 2014. As noted in the chronology section, we did not meet this deadline and so Defra has not complied with regulation 11(4) of the EIRs.

I apologise for the delays that occurred in responding to your initial request for information and your request for an internal review.

Consideration of the internal review and conclusion

The starting point for the consideration of internal reviews is to determine whether Defra holds the requested information and, if so, whether any EIRs exceptions cited in refusal letters are engaged and whether the public interest test has been applied correctly.

Your request for a copy of the full Frontier Economics report and appendices

With regard to the first part of your request, Defra does not hold "a full copy of this report including any appendices". This should have been made clear in Defra's response of 21 February and regulation 12(4)(a) should have been quoted. I apologise for that omission. Regulation 12(4)(a) of the EIRs relates to information which is not held at the time when an applicant's request is received. Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

Regulations 12(4)(d) (material in the course of completion, unfinished documents, incomplete data) and 12(4)(e) (internal communications)

I have considered the public interest arguments for and against disclosure set out in Defra's letter of 21 February regarding the application of the exceptions at regulations 12(4)(d) and 12(4)(e) of the EIRs and have concluded that they have been appropriately weighted in respect of the majority of the withheld information. In conducting this internal review, I have concluded that some parts of the email correspondence that was withheld as part of Defra's response to your request should be disclosed. As regards the remainder of the withheld information, I have concluded that the decision to withhold that information under the exceptions in regulations 12(4)(d) and 12(4)(e) was correct for the reasons set out in Defra's letter of 21 February. I shall not reiterate the public interest arguments here as they are sufficiently complete in Defra's letter of 21 February.

I attach a document disclosing the previously withheld information mentioned in the above paragraph. The attached document comprises the emails in question and the information now being disclosed is highlighted in yellow so that you can easily see which information is now being disclosed as a result of this internal review.

Personal data

In your request for internal review, you refer to Defra's redaction of names and email addresses in the information disclosed to you and you believe that the information ought to be disclosed. In reviewing Defra's response, I agree that information indicating the departments in which senders and recipients are employed should be disclosed if this enables the information in the body of the emails to be given its proper context. In the attached document, therefore, we have included this information.

As regards the redaction of names or other information identifying individuals, I have concluded that Defra was correct in withholding this information.

The names and any other information relating to individuals were redacted under regulation 12(3), of the EIRs to be read in conjunction with regulation 13(1), which provides that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA). We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data and, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to the DPA.

There is only one condition in Schedule 2 that is relevant to this request, and that is 6(1) where the processing is necessary for the purposes of legitimate interests pursued by Defra (or a third party to whom the data is disclosed), except where the processing can be considered to be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject. The decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke*, established the following three part test that must be satisfied before the sixth condition will be met:

- i. there must be legitimate interests in disclosing the information,
- ii. the disclosure must be necessary for a legitimate interest of the public, and
- iii. even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.

The first part of this test is satisfied by the EIRs request, as there is a public interest in official information being made available, and a legitimate interest in the identities of individuals being disclosed. However, the public interest in transparency and accountability has already been met by the disclosure of remainder of the documents, and the names and other information identifying civil servants who are not in the Senior Civil Service (SCS) are not key to the context of these documents. A further disclosure of this information is not necessary for the legitimate interests of the public as this would add virtually nothing to the public's understanding of the policy area. In light of this I did not go on to consider the final element of the test.

Processing the names and other information identifying the non-SCS civil servants (through disclosure in response to this request) would therefore fail to meet a condition within schedule 2 of the Data Protection Act 1998 and so would breach the first data protection principle. Consequently this information is exempt from disclosure under section 40(2) of the FOIA.

I hope that you consider that this letter fully addresses your concerns. However, if you are not satisfied with the outcome of this internal review, you have the right to appeal directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
<http://www.ico.gov.uk/complaints.aspx>

Yours sincerely

[signed]

[name redacted]