



Department
of Energy &
Climate Change

[REDACTED]

3 Whitehall Place
London
SW1A 2AW

www.gov.uk/decc

Our Ref: FOI 2015/09972

30th July 2015

Dear [REDACTED]

In your email of 27th May where you clarified your earlier Freedom of Information request (Reference: FOI2015/08712) regarding *“all correspondence related to fracking between the Government and Lancashire County Council since November 1st 2014”*

Your email confirmed that you are seeking *“any correspondence DECC may hold between any Government department and Lancashire County Council”*

Your request is being considered under the Environmental Information Regulations 2004 (‘the EIRs’) on the basis that the information you have sought disclosure of, does in our view, fall within the definition of ‘environmental information’ as stated in the EIRs. However, to the extent that any of the information requested is not environmental, we have also considered your request under the Freedom of Information Act 2000 (FoIA). Accordingly, your request has been dealt with under the terms of the EIRs and the FoIA.

Following a search of our paper and electronic records, I have established that the Department holds information falling within the terms of your request. This information is enclosed in **Annexes A to H**.

After careful examination, DECC considers that some the information is exempt from disclosure under the following EIRs and Fol exceptions and is therefore being withheld:

Regulation 12(4)(e) EIRs – Internal communications

Regulation 12(4)(e) makes the provision whereby internal communications of a public authority including correspondence between officials in any government department and between any government departments may be protected under this exception. The rationale behind this exception is that it is often in the public interest that public authorities have a space within which to think in private as recognised in the Aarhus Convention. This

exception is subject to the public interest test. In considering this exception we have applied a presumption in favour of disclosure.

We believe there is a general public interest in the disclosure of information as greater transparency makes Government more accountable and there is a public interest in being able to assess the quality of information and advice which is used in subsequent policy formulation. However, against this there is a public interest in ensuring that the formulation and development of government policy and government decision making can proceed in the self-contained space needed to ensure that it is done well. We believe that, if officials were conscious that such advice made in an internal document could be made public, frankness would inevitably be inhibited, and policy decisions would be made without full consideration of the issues. Moreover, making public Government thinking at an early stage, which may change later on in the decision-making process, could cause confusion and uncertainty for industry and would be detrimental to the policy as a whole. In our view, therefore, we believe that the balance of the public interest lies in withholding certain information you have requested.

Regulation 13(1) EIRs – Personal information

Some information constitutes personal data and has been redacted. Regulation 13(1) of the EIRs provides an absolute exemption for personal data which then falls to be dealt with under the Data Protection Act. Personal data of third parties can only be disclosed in accordance with the data protection principles. In particular, the first data protection principle requires that disclosure must be fair and lawful and must comply with one of the conditions in Schedule 2 of the Data Protection Act.

We do not think it is fair to release the names and contact details of junior DECC staff below Senior Civil Service level, or staff in other organisations, and do not think that any of the relevant conditions in Schedule 2 of the DPA apply.

Section 35(1)(d), FOIA – Operation of a ministerial private office

Section 35(1)(d) covers information relating to the operation of ministerial private offices, such as routine emails, circulation lists, procedures for handling ministerial papers or prioritising issues, travel expenses, information about staffing, the minister's diary, and any purely internal documents or discussions which have not been circulated outside the private office.

Here again, we believe that there is a public interest in the disclosure of information and transparency. However, there is a strong public interest in the private offices of ministers being able to plan, liaise and coordinate with local council officials on a range of issues between Her Majesty's Government and local councils. It is important that this can be done in a safe space that allows officials in both a minister's office and local council officials to discuss options candidly. If officials in either organisation felt that such day to day liaison was being conducted in public it would lead to a change in behaviour.

Appeals Procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 40 working days of the date of receipt of the response to your original letter and should be sent to the Information Rights Unit at:

Information Rights Unit (DECC shared service)
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

E-mail: foi@decc.gsi.gov.uk

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply 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

Yours sincerely,

Energy Development