



Department
of Energy &
Climate Change

Department of Energy & Climate Change
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Our ref: FOI2015/17155

7 October 2015

Dear

Thank you for your email of 12 August where you requested the following information in connection with the Howe/Nelson third party access notice:

- *Please can you confirm the form of and provide available documentation in support of the approval by the SoS for the December 2014 notice.*
- *Please can you also provide available documentation in support of Andy Samuel's approval of the recent Variation*

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

I can confirm that we do hold information falling within the terms of your request.

With regard to your first request, the available documentation in support of the December 2014 notice is contained in Attachment 1. This consists of:

- Email dialogue with the office of the Minister of State on 8 and 10 December 2014
- Submission made to the Minister on 8 December 2014 – material redacted on the grounds of legal professional privilege (section 42(1) of the Act) and commercial interests (section 43(2) of the Act)
- Notice included as Annex 2 of the Submission – material redacted on the grounds of Information provided in confidence (section 41(1) of the Act) and commercial interests (section 43(2) of the Act)



Department of Energy & Climate Change

With regard to your second request, the available documentation in support of the recent variation is contained in Attachment 2. This consists of:

- Email dialogue with Dr Andy Samuel (Chief Executive of the Oil & Gas Authority) on 10, 13 and 20 July 2015
- Submission made to Dr Samuel on 10 July 2015 – material redacted on the grounds of commercial interests (section 43(2) of the Act)
- Variation attached to the Submission to Dr Samuel on 10 July 2015 – material redacted on the grounds of Information provided in confidence (section 41(1) of the Act) and commercial interests (section 43(2) of the Act)
- Note of meeting of 28 July 2015 with Dr Samuel – material redacted on the grounds of legal professional privilege (section 42(1) of the Act)
- Email from Dr Samuel dated 18 August 2015

The first attachment that was included in the email of 20 July 2015 to Dr Samuel is covered by your first request. The other attachments that were included in the email of 20 July contain information that is in the public domain, and therefore do not need to be disclosed in accordance with section 21 of the Act, because this information is reasonably accessible to you. The information can be accessed via the following links:

Energy Act 2011: <http://www.legislation.gov.uk/>

DECC Guidance: <https://www.gov.uk/guidance/oil-and-gas-infrastructure>

Map showing fields and equities: <https://www.ukoilandgasdata.com>

Field equity information is at: <https://www.gov.uk/guidance/oil-and-gas-uk-field-data>

As noted above, information has been withheld under Sections 41(1), 42(1) and 43(2) of the Act.

Information is exempt under section 41(1) if it was obtained from any other person (including another public authority) and its disclosure would give rise to an actionable breach of confidence. For the second condition to apply, the information concerned must have the necessary 'quality of confidence' in that the information is not trivial nor is it readily available by other means. If the information concerned attracts that element of quality, it can only be disclosed by consent, if required by law or if there is an overriding public interest in disclosure. We believe that the relevant information does have the necessary quality of confidence and do not consider that any of the grounds for disclosure arise in this case and, moreover, that the strong presumption in maintaining the confidentiality in the information has not been overridden by any general interest in disclosure.

Some of the information falling within scope of your request consists of advice from legal advisors. Section 42(1) provides a qualified exemption for information in respect of which a claim to Legal Professional Privilege (LPP) could be maintained in legal proceedings. This privilege applies to confidential communications for the purposes of giving or receiving legal advice.

Generally, disclosing advice between Government officials and lawyers could be prejudicial to Government's interest and inhibit its ability to defend itself from legal challenge. Again, while I appreciate that disclosure of this information may promote greater transparency, it is important for our lawyers to be able to give comprehensive and frank legal advice setting out both the strengths and weaknesses of any position.



Department of Energy & Climate Change

In view of this, there is a significant public interest in maintaining legal professional privilege in relation to such advice and I do not therefore believe that disclosure would be in the public interest, and this information is therefore withheld.

Some of the information requested is exempt under section 43(2) of the Act. Section 43(2) applies because disclosure of the requested information would, or would be likely, to prejudice the commercial interests of any person, including the public authority holding it. In this instance it would, or would be likely to prejudice to the commercial interests of the parties involved in the dispute.

Section 43(2) is subject to the public interest test. We have weighed the general public interest benefits of disclosure, as greater transparency enhances public scrutiny, making Government more accountable to the public. Against this is the need to ensure that the commercial interests of the Department and external organisations are not damaged or undermined by disclosure of information that is not common knowledge and could adversely impact on organisations' commercial affairs in the future. In addition, the Department relies on external organisations to provide confidential, commercial information in order to make informed decisions. We have also taken into account the fact that the information was obtained from third parties with the expectation that it would be treated in confidence, noting that some of the information was obtained using powers under Section 87(2) of the Energy Act 2011 which include limitations on disclosure. Disclosure could make them reluctant to provide this information in future, and also damage working relations with the Department, thus making it more difficult for the Department to carry out its duties.

Having considered the public interest, we consider that the public interest in disclosing this information is outweighed by the public interest considerations in favour of withholding the information. The Department's decision is therefore to withhold this information.

Finally, some information held constitutes personal data. Section 40 of the Act provides an absolute exemption for personal data under the Data Protection Act. Personal data of third parties can only be disclosed in accordance with 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 that it is fair to release the personal data of junior staff members or third parties, and do not think that any of the relevant conditions apply.

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 two months 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



Department
of Energy &
Climate Change

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,

Oil & Gas Authority
Department of Energy and Climate Change