



Department
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Department of Energy & Climate Change

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Our ref: 13/1542

28 November 2013

Dear

RE: Freedom of Information Request – Reference 13/1542

Thank you for your Freedom of Information request of 31st October 2013 in which you asked for the following:

Details of the contract agreed by the Government (Mr. Ed Davey) and EDF to build the new Nuclear plant so that we have the FULL information to hand.

Some of the information you have requested may constitute environmental information for the purposes of the Environmental Information Regulations 2004 (EIRs). As such, to the extent that the information requested may be environmental your request has also been considered under the EIRs. However, the outcome would be the same under the Environmental Information Regulations 2004 (EIRs).

We have searched for the information related to your request and have concluded that we do not hold information within the scope of your request as, at present, an Investment Contract has not been agreed or offered for the Hinkley Point C power plant.

As announced on 21st October, Government and EDF Group have reached initial agreement on the key terms of a proposed investment contract for the Hinkley Point C nuclear power station.

<https://www.gov.uk/government/news/initial-agreement-reached-on-new-nuclear-power-station-at-hinkley>.

The key terms are subject to contract and, although not legally binding, establish further the parameters for further negotiations on the proposed investment contract. These further negotiations remain on going and we do hold information in relation to them.

Having carefully considered your request and the public interest arguments both in favour and against disclosure of information in relation to the on-going negotiation, we have come to the view that all of this documentation is exempt from disclosure under the Freedom of Information Act. Further details on the considerations are set out below.

FOI exemption

Section 35

Section 35(1) (a) of the Freedom of Information Act 2000 provides an exemption for information that relates to the formulation or development of Government policy.

Details on the on-going negotiation contain information which relates to the detailed formulation and further development of Government policy on Contracts for Difference, across the Department and in our view section 35(1) (a) applies.

Section 43

Section 43(2) provides that information may be exempt information, subject to the public interest test, if the release of the information would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding. Section 43(2) is a qualified exemption.

Although we restate that there is no contract to disclose, we are satisfied that the release of much of the information around the negotiations could damage and adversely affect the commercial position of the Government in the discussions on Final Investment Decision (FID) enabling for Hinkley Point C.

It would be impossible to negotiate this kind of deal effectively in public and providing the information has the potential to reveal positions that have not been finalised, many of which may be price sensitive and as such has the potential to affect the market in a way that would not have been the case without release of the information. We have also considered the impact that releasing the information would have on maintaining the trust and confidence between the Department and companies who engage with us. If the Department does not respect such confidences its ability to engage meaningfully with companies and other stakeholders would be likely to be prejudiced, resulting in damage to the Department's own commercial interests.

In terms of the public interest balancing test it is in the public interest that the Department's commercial activities are conducted in an open and honest way. However disclosure of information in this case, in a particularly high profile area would make it less likely that companies would provide the Department with commercially sensitive information in the future. This would undermine the ability of the Department to properly fulfil its role in assessing the relevant commercial factors and is contrary to the public interest.

Conclusion

Finally I should add that a contract will only be offered if it is value for money, fair and affordable, and any contract agreed will be laid before Parliament and published in line with the requirements of the Energy Bill. We also intend to publish summaries of our value for money assessment. We believe that the publication of information in due course in relation to any investment contract which is offered will satisfy the public interest for the disclosure of information in this area.

In conclusion we are satisfied that given the above commitment as well as the public interest arguments for withholding the information under the above exemptions which we consider applies, the balance of the public interest firmly lies in withholding the information related to that which you have requested.

Appeals procedure

If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this letter. If you wish to request an internal review, please contact the Information Rights Unit at:

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

(foi@decc.gsi.gov.uk).

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

If you have any queries about this letter, please contact me quoting the reference number above.

Yours sincerely