



Department
of Energy &
Climate Change

3 Whitehall Place
London
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REDACTED

www.gov.uk/decc

Email: REDACTED

Our ref: FOI2015/02147

28 May 2015

Dear REDACTED

I refer to your e-mail of 30 January in which you asked:

Please can you provide me with a copy of all correspondence between OUGO and Third Energy, Barton Willmore and UKOOG from 1 July 2014 to 30 January 2015.

In our view, some of the information in your request falls under the Freedom of Information Act 2000 (FOIA) and some within the definition of 'environmental information' stated in the Environmental Information Regulation 2004 ('the EIRs'). Your request has therefore been considered under the terms of both the FOIA and EIRs.

Following a search of our paper and electronic records, I have established that the Department holds information falling within the terms of your request in relation to UKOOG and Third Energy. The Department does not hold any information relating to Barton Willmore. Redacted copies of information relating to **UKOOG** are in **annex A** and **Third Energy** in **annex B**.

One of the enclosures in **annex A**, page 22 an e-mail dated 29 Oct, which incorrectly states that the attachment is a final report by "Ipsos Mori", however this report was still in draft and is therefore being withheld under Reg.12(4)d of the EIRs. The final published report can be

found at the following link:

<https://www.gov.uk/government/publications/public-engagement-with-shale-gas-and-oil>

One of the attachments in **annex B**, page 1, contains a letter from Ryedale Council. DECC subsequently responded to the questions set out by Councillor Paul Andrews in the letter. DECC's response including some factual clarification is also attached in **annex B**, page 1 and can also be found at the following link:

http://www.ryedale.gov.uk/attachments/article/812/150129_Letter_from_DECC_fracking.PDF

After careful examination, DECC considers that some the information requested is exempt from disclosure under both the FOI exemptions and the EIRs exceptions and is therefore withheld:

FOI exemptions include:

- Section 35 (a) - formulation and development of government policy
- Section 40 - personal data
- Section 41 - information provided in confidence
- Section 43(2) - likely to prejudice the commercial interest of any person

EIR exceptions include:

- Regulation 12(4)(d) - material which is still in the course of completion, unfinished documents, and incomplete data unfinished or incomplete document.
- Regulation 12(5)(e) - confidentiality of commercial information
- Regulation 12(5)(f) - disclosure of information would adversely affect the interest of the person who provided the information in confidence
- Regulation 13(1) - disclosure of personal data

Section 40 and regulation 13(1) of the EIRs are absolute exemptions/exceptions and are not subject to public interest tests. The remaining exemptions/exceptions are qualified, and subject to a public interest test. The key public interest considerations we have taken into account are set out below.

In considering the public interest we have applied a presumption in favour of disclosure as required by regulation 12(2) of the EIRs. The FOI Act does not contain a similar provision, but DECC applies the same principle to requests that come within the ambit of that legislation.

Section 35 – FOI Act

We believe some of the information is exempt from disclosure under section 35 of the FOI Act. Shale gas policy is still being developed and subject to discussion within government. Disclosing such information would prejudice the ability of Ministers and officials to discuss policy options and its implications freely and frankly. It is important that Ministers and officials are able to maintain a private thinking space, so that policy development can be conducted in an uninhibited fashion.

The exemption is subject to the public interest test, specifically: the importance to the public interest of disclosing information about government affairs, versus the public interest in ensuring that there is a space within which Ministers, officials and commercial organisations are able to discuss issues, freely and frankly. We consider that were this information to be

disclosed in the public domain than this may have a chilling effect on the deliberation of the commercial companies. This would not be in the in the public interest.

Taking into account all the circumstances of the case, we have concluded that the balance of public interest favours in withholding some information.

Regulation 12(4)(d) - material which is still in the course of completion, unfinished documents, and incomplete data

We consider that regulation 12(4)(d) of the EIRs applies because some of the information is still in the form of unfinished drafts. In deciding not to release information under this exception, we have balanced the public interest in withholding the information against the public interest in disclosure. We recognise that there is a public interest in disclosure and understand the importance of transparency in public policymaking.

But there is also a strong public interest in withholding the requested information because the documents are unfinished drafts and any conclusions drawn from such analysis could be misleading. The government needs to ensure that information which it releases into the public domain is based upon robust evidence and analysis.

Having considered the balance of public interest, we have concluded that the public interest in withholding outweighs the public interest in disclosing certain information in this instance.

Section 43(2) FOI and regulation 12(5)(e) of EIRs – likely to prejudice confidentiality of commercial interests

The Department considers that some of the information that is being withheld contains commercial information, the disclosure of which would be likely to prejudice the commercial interests of either UKOOG or its members, or Third Energy. The exemption under section 43(2) FOI Act applies. To the extent this information is environmental, it is being considered with the exception under regulation 12(5)(e) where the disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect legitimate economic interests.

DECC recognises that there is general public interest in disclosure of information to help the public understand the United Kingdom's economic, industrial and commercial policy. We also recognise that openness by DECC may increase public trust and engagement with government. But disclosure of commercially sensitive information in relation to both UKOOG's and Third Energy's interest in shale gas provided to DECC in confidence could damage industry's commercial interests and potentially undermine future communication with this industry. That would make it harder for Government to understand position, which would be detrimental to the effective development of policy.

Taking into account all the circumstances of the case, we conclude that the public interest in engaging this exception outweighs the public interest in disclosing the information. The Department's decision is therefore to withhold certain commercially sensitive information within the scope of this request.

Section 41(1) FOI and regulation 12(5)(f) EIRs – information provided in confidence and voluntarily

Section 41(1) is an absolute exemption and applies to the information provided to the

Department, disclosure of which would constitute a breach of confidence over which a person could take legal action. We consider that disclosure of such information in this instance would result in actionable breach of confidence as there is a strong public interest in protecting that confidence and there are no public considerations in relation to this information requiring us to set the duty of confidentiality aside. Private communication with commercial entities in the energy markets is essential to the formulation of energy policy.

Similarly, regulation 12(5)(f) of the EIRs is designed to protect the interests of the person who provided the information where that person: was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority; did not supply it in circumstances such that DECC or any other public authority is entitled apart from these regulations to disclose it; and has not consented to its disclosure.

As above, we recognise that there is a public interest in transparency. When companies share sensitive information with the Department they will only do so if that information will not be released to the public; therefore disclosing such sensitive information could harm the interests of the company and inhibit open and constructive discussions between the Department and industry in the future. These companies provided information to DECC voluntarily, without any obligation. Making such information public would inhibit future communications with them and others in industry.

Additionally, these public interests have to be weighed against a public interest in the prevention of adverse effects on the interests of the third party provider of information, and the principle of confidentiality in similar way to that discussed above in the context of regulation 12(5)(e) of the EIRs.

Taking into account all the circumstances of the case, we have concluded that the balance of public interest favours withholding certain information in this request.

Section 40(2) FOI and regulation 13(1) of the EIRs

Finally, some of the information constitutes personal data and has been withheld. Section 40(2) of the FOI Act and regulation 13(1) of the EIRs provides an absolute exemption/exception for personal data which then falls to be dealt with under the Data Protection Act (DPA).

Personal data of third parties can only be disclosed under 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 DPA. We do not think it is fair to release the names and contact details of 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. As a result, the names and contact details of staff in DECC below Senior Civil Service level and staff in other organisations have been redacted from your copy of this information.

Appeals Procedure

If you are unhappy with the result of your request for information, you may request an internal review within 40 working days of the date of receipt of the response to your original letter. If you wish to request an internal review, please contact:

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

Email: foi.requests@bis.gsi.gov.uk

Please 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, Cheshire, SK9 5AF.

Yours sincerely

Office for Unconventional Gas and Oil