Department of Energy & Climate Change
3 Whitehall Place,
London SW1A 2AW
E: REDACT REDACT REDACT
www.decc.gov.uk

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Our ref: 12/0041

29 May 2012

Dear REDACT REDACT

RE: Freedom of Information Request

Thank you for your email of 10 January where you requested details of correspondence (emails, letters) and meetings (agenda, government briefing papers, minutes) between senior civil servants in the Office for Nuclear Development and senior executives from:

- The Nuclear Industry Association;
- EDF Energy;
- RWE nPower;
- NuGen;
- British Energy;
- Foratom;
- Westinghouse;

discussing the Fukushima disaster and its implications for Britain's nuclear industry and the new build of nuclear reactors, and / or nuclear safety from 1st April 2011 to the present day. We have interpreted your request in respect of RWE/nPower to also cover Horizon Nuclear Power, the joint venture between RWE/ nPower and E.On. We apologise for the delay in responding.

Some of the information you have requested is already in the public domain arising from meetings of the Nuclear Development Forum ("NDF"). In particular there is a speech made by a representative of EDF at the 9th meeting of the NDF on 27th October 2011.The minutes of this meeting and further information about the NDF, including minutes, agendas, reports, presentations and attendee lists of previous meetings are available to view at: http://www.decc.gov.uk/en/content/cms/meeting_energy/nuclear/forums/develop_forum/develop_forum.aspx

We have considered your request under both the Freedom of Information Act 2000 ('the FOI') and the Environmental Information Regulations 2004 (EIRs) as our view is that the information may fall within the scope of both regimes.

We initially contacted you on 7 February 2012 to explain that we were considering what information was exempt from disclosure as well as considering whether the public interest in withholding the information outweighed the public interest in disclosing it. The exemptions in the FOI and exceptions in the EIRs which we consider relevant are as follows:

Section 41 of the FOI and regulation 12(5)(f) of the EIRs

Some of the information in question falls within the section 41 of the FOI or to the extent that it consists of environmental information it falls within scope of regulation 12(5)(f) of the EIRs.

Section 41 of the FOI applies (information provided in confidence) as this information was provided to the Department on the clear understanding that it would not be disclosed, The exemption in section 41 is an absolute exemption and under the Act no consideration of the balancing of the public interest is required.

To the extent that the information in question falls within the EIRs then regulation12(5)(f) applies. The purposes of this exception is to ensure the free flow of volunteered information to government from third parties. This exception protects the interests of a person who has provided information where he: (i) was not under and could not have been put under any legal obligation to supply it to that or any other public authority; (ii) did not supply it in circumstances that that or any other public authority is entitled apart from these regulations to disclose it and; (iii) has not consented to that disclosure.

There is a requirement to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. There is a general public interest in transparency and openness in government which favours disclosure. However when organisations provide information to government they need to have confidence, particularly where that information might be sensitive, that such information will not routinely be released. Disclosing the information in question is likely to inhibit discussions and the free flow of information between the Department and third parties. This would in turn lead to poorer quality policy and decision making within government. Given this in our view the public interest in withholding the information outweighs the public interest in disclosing it.

Section 27(1) of the FOI and regulation 12(5)(a) international relations

The same information which we consider exempt by virtue of section 41 FOI and regulation 12(5)(f) of the EIRs is also exempt or excepted either:(i) under section 27 of the FOI in that its disclosure would be likely to prejudice relations between the United Kingdom and other states or the interests of the United Kingdom abroad: (ii) or to the extent that it consists of environmental information its disclosure would adversely affect international relations under regulation 12(5)(a) of the EIRs. The information in question relates to documentation prepared by regulators on stress testing of nuclear reactors. If the department were to disclose this information the ability of UK regulators to engage and interact with their equivalents across Europe on nuclear issues would be prejudiced. It is likely that other regulators would be less likely to discuss ideas freely with their UK counterparts in the fear that these deliberations might be disclosed therefore prejudicing the UK's international relations in this area.

The exemption in the FOI and the exception in the EIRs are subject to the public interest balancing test. There is general public interest in information from regulators being made publicly available both nationally and at a Pan European level. However the public interest in

transparency has been well served by the publication of information relating to stress testing both at a national and Pan European level.

However there is also is a strong public interest in the UK's regulatory authorities being able to maintain strong relationships with their European and international counterparts and having the space to to discuss issues with without the fear that these deliberations might be disclosed. These relationships could be damaged if this information were released which could impede the flow of ideas and in turn result in poorer policy and decision making in this area. Given this, in our view the balance of the public interest in respect of this exemption and exception lies in withholding the information.

Section 36(2)(b) of the FOI prejudice to the free and frank exchange of views and internal communications regulation 12(4) of the EIRs

Part of the information relates to Ministerial and Departmental deliberations with industry and to the extent it is covered by the FOI its falls within the scope of section 36(2)(b) of the FOI. This exemption applies if disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. It is likely that if the information in question were disclosed business would be inhibited in providing free and frank advice to Ministers or the Department or being free and frank in providing their views in the expectation that these views might be made public.

To the extent that the information in question constitutes environmental information then some of it falls within the scope of the exception in regulation 12(4) that the request involves the disclosure of internal communications. The information in question relates to an internal record of DECC ministerial meetings with industry.

Again we need to consider whether the public interest lies in withholding or disclosing the information. The same public interest considerations apply whatever information regime the information falls into. There is a public interest in the transparency of discussions between government and the nuclear power industry in the light of the Fukushima as this is an area of general public concern. This in turn enhances trust and engagement between citizens and government. However the general public interest in transparency in this area has been served by the publication of information both by the authorities and industry.

However there is also a need to ensure that there is proper engagement and debate between government and business and that where necessary there is space for a free and frank exchange of views and for the provision of free and frank advice without those deliberations being made public. If businesses and other organisations felt that the details of their discussions were to be disclosed they would be less willing to engage in discussions with Government leading in turn to poorer policy and decision making because information and expert views were not being provided or being provided in an incomplete form. Furthermore, having the free space in which to enter into a dialogue with third parties assists in stakeholder management, which in itself enables more thorough policy development in the public interest. Given the above our view is that as far as this exemption or exception is concerned the public interest lies in withholding the information.

To the extent that the information is environmental information and does not constitute internal communications then the exemption in regulation 12(5)(f) of the EIRs applies. If this is the case the same public interest considerations referred to under the first heading above applies.

Personal information section 40(2) of the FOI and regulation 12(3) of the EIRs

Some personal information has been redacted from the information released. To the extent that the personal data falls within the scope of the FOI then under section 40(2) of the FOI this information is exempt as it constitutes personal data, the disclosure of which, would contravene one or more of the data protection principles. Personal data can only be disclosed in accordance with the data protection principles. 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 consider that it is fair to release the names of third parties and do not consider that any of the relevant conditions apply.

To the extent that this personal data comes within the scope of the EIRs, regulation 12(3) of the EIRs, with reference to regulation 13 provides an absolute exemption for personal data which then falls to be dealt with under the Data Protection Act. As with the FOI personal data 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. Again we do not consider if fair to release the names of third parties and do not consider that any do the relevant conditions apply.

Please be aware that where information is outside the scope of your request it has been redacted or not included.

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 addressed to the Department.

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,

REDACT REDACT
Office for Nuclear Development