



Department
for Environment
Food & Rural Affairs

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Our ref: RFI 7002
Date: 13 February 2015

Dear [REDACTED]

REQUEST FOR INFORMATION: Evidence relating to removal of CAP subsidy on solar arrays

Thank you for your request for information, which we received on 4 November 2014, about evidence relating to removal of CAP subsidy on solar arrays. As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs). I apologize for the delay in replying to you.

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

I enclose a copy of the information which can be disclosed:

- Documents and correspondence in relation to evidence informing the policy to remove CAP subsidy on solar arrays for the six month period prior to announcement on 19th October 2014.
- And, specifically, correspondence and details of meetings with academic and agricultural industry stakeholders renewable energy stakeholders and, the Department of Energy and Climate Change in relation to the policy to remove CAP subsidy on solar arrays for the 6 month period prior to announcement on 19th October 2014.

Following careful consideration, we have decided not to disclose some of this information. A small part of the information you requested is being withheld as it falls under regulations 12(3) and 13(1) (third party personal data) of the EIRs, as the information constitutes personal data relating to third parties. These data consist of names and contact details of people sending or receiving the correspondence disclosed. These data are redacted in black. Regulations 12(3) and 13(1) of the EIRs provide that personal data relating to third parties are exempt information if disclosure would breach the Data Protection Act 1998 (DPA).

We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data, second, disclosure would not satisfy any of the conditions for data



processing set out in Schedule 2 to the DPA. Therefore, we have concluded that this information is exempt from disclosure under regulation 12(3) and 13(1) of the EIRs.

A small part of the information you have requested is being withheld because it falls under regulation 12(4)(e) (internal communications). The information comprises an exchange of correspondence between Ministers. Correspondence between Government departments takes the form of internal communications by virtue of regulation 12(8). We appreciate that there is a public interest in disclosing internal communications, as this enables the public to assess the quality of policy formulation, advice and guidance, and provides transparency in the decision making process, making Government more accountable. However, releasing internal communications in the form of correspondence between Ministers would inhibit the ability of Ministers to promote a free and frank exchange of views, if there was a possibility that these views could be disclosed at a later date. This would have a detrimental effect on the political process, leading Ministers to be less candid in their views, or to adopt less formal media for the purpose (such as undocumented meetings or telephone calls). This would affect policy development, as it would prove difficult taking account of the views expressed by Ministers if records were not kept. Given the live nature of the communications within the scope of the request, notably draft changes to the planning and subsidy framework for photovoltaics, such outcomes would be likely to prejudice the conduct of public affairs.

Having considered the public interest, the department has taken the decision to withhold the information requested.

A small part of the information you have requested is also being withheld as it falls under regulation 12(5)(b) (course of justice). Case law (for example *Kircaldie v IC Thanet district Council*) has established that exemption 12(5)(b) covers information protected by legal professional privilege (LPP). The information withheld contains information protected by the legal advice privilege (confidential communications between a lawyer and a client for the purpose of seeking or obtaining legal advice in either contentious or non-contentious matters) contained within the broader legal professional privilege.

There is a public interest in connection with the disclosure of the information subject to LPP. The arguments in favour of disclosure are:

- Public interest in transparency of decision making by public authorities, which promotes accountability.
- Public interest in individuals having access to information which assists their understanding of why decisions that affect them were made by public authorities.
- Public interest in disclosing information which will help determine whether public authorities are acting appropriately, so as not to undermine public confidence in authorities.

But there are also public interest arguments against disclosure:

- There is a strong public interest argument in protecting the established principle of confidentiality in communications between lawyers and their clients.
- Case law (see *Bellamy v Information Commissioner and the STI*) recognises that “there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest.” It was also stated in paragraph 35 of the Bellamy case that: “it is important that public authorities be allowed to conduct a free exchange of

views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear cut case.”

- There is a public interest argument in ensuring LPP applies equally to all parties so that they are on a level footing. As legal advice highlights both the strengths and weaknesses of a particular position, if such advice was routinely disclosed, public authorities would potentially be in a weakened position compared to other persons not bound by the EIRs.

We believe that disclosure would have an adverse effect on the course of justice on the basis that the principle of LPP would be weakened if information subject to LPP was routinely disclosed. Moreover, the regular disclosure of information protected by LPP would inhibit the seeking and provision of full and frank legal advice in the future. Such arguments have been accepted by the Commissioner in a number of Information Tribunal cases. On balance, we consider that in this case the arguments in favour of exception for LPP outweigh those in favour of disclosure.

In addition, parts of the information that accompanies the material you requested is being withheld because it falls outside of the scope of your request i.e. it is not evidential or covers different subject matter. These data are redacted in white.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's transparency agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact the address below.

Yours sincerely,




Defra FOIA and EIRs Team
InformationRequests@defra.gsi.gov.uk

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to [REDACTED] Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF