



Department  
of Energy &  
Climate Change

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REDACTED  
REDACTED

[www.gov.uk/decc](http://www.gov.uk/decc)

E-mail: REDACTED

Our ref: FOI 2015/16644

September 2015

Dear REDACTED,

Thank you for your e-mail of 6 August 2015, in which you made the following request for information regarding the "Draft Shale Gas Rural Economy Impacts paper recently released by DEFRA after an ICO decision"

Please provide any internal **correspondence and meetings** involving any of

- Secretary of State for DECC
- DECC's Office for Unconventional Gas and Oil (SG1 and above)
- DECC's Oil and Gas Authority (SG1 and above)

where the meetings or correspondence have focused on the Draft Shale Gas Rural Economy Impacts paper recently released by DEFRA after an ICO decision.

For each meeting, could I be supplied with the:

- Date/Location
- Names and titles of the people in attendance
- Agendas/Minutes/Briefing notes etc

Similarly, for each item of correspondence, to include but not be limited to, telephone calls, emails or text messages, could I be supplied with the:

- Time/Date
- Names and titles of other people party to the correspondence
- Any attachments to emails or supplementary documents included
- Any associated documents generated as a direct result of this conversation e.g. briefing notes, minutes, memos, transcripts or summaries

I am looking for any information generated between May 2015 and July 2015 which I believe will cover the time period from the ICO decision to the disclosure by Defra after the ICO decision.

Without prejudice to the request, the information I am seeking specifically relates to the decision to release the Report on the 1st July 2015.



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We have considered your request in accordance with the Freedom of Information Act 2000 (FoIA). However, to the extent that any of the information requested is environmental, we have also considered your request under Environmental Information Regulations 2004 (EIRs). Accordingly, your request has been dealt with under the terms of the EIRs and the FoIA.

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).

Following a search of our paper and electronic records, I have established that the Department holds information falling within the terms of your request. These records are attached in **Annex A**. To note, one email dated 5 June references an attached email; this email is not contained in our records and is therefore not included.

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 40 - personal data.
- Section 36(2)(b) – release would inhibit the free and frank exchange of views for purpose of deliberation.
- Section 35(1)(a) – information relates to formulation or development of government policy.

EIR exceptions include:

- Regulation 13(1) - personal data.
- Regulation 12(4)(d) - material which is still in the course of completion, unfinished documents, and incomplete data unfinished or incomplete document.
- Regulation 12(4)(e) – information relates to internal communications

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.



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Some of the information requested is already available in the public domain, and can be found at the following link:

<https://www.gov.uk/government/publications/draft-shale-gas-rural-economy-impacts-paper>

### **EIR Regulation 12(4)(d)**

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 this case, a document being withheld refers to a draft response to a previous FOI request asking for release of the Defra Rural Impacts paper. Because the Defra paper has since been released following the ICO decision, the draft FOI response is no longer up-to-date. If the draft response were to be released, it would lead to confusion. This could result in DECC staff having to spend time dealing with enquiries about this potential confusion, which would not be an effective use of public resource.

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 some of the requested information because the documents are unfinished drafts and any conclusions drawn from such analysis could be misleading.

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.

### **FOI Section 35(1)(a) and Regulation 12(4)(e)**

Section 35(1)(a) of the FOIA provides an exemption for information which relates to the development and formulation of government policy. Regulation 12(4)(e) makes the provision whereby internal communications of a public authority, including correspondence between officials in any government department and between any government departments, may be protected. Shale gas policy is still being developed and subject to discussion within Government. Disclosing this information would prejudice the ability of Ministers and officials to discuss policy options and its implications freely and frankly. The withheld information includes internal emails between departmental officials and Ministers that contain speculation and exchanging of advice with regards to the release of the Defra report. 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.



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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 and officials are able to discuss issues freely and frankly. Making public Government thinking at an early stage on issues surrounding shale policy development, which may change later on in the decision-making process, could cause confusion and uncertainty for the public and would be detrimental to the policy as a whole. This would not be 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 this information.

### **FOI Section 36(2)(b)**

We believe some of the information is exempt from disclosure under Section 36(2)(b) of the FOI Act. Section 36(2)(b) applies in relation to information which, in the opinion of a qualified person, would or would be likely to (i) inhibit the free and frank provision of advice, or (ii) the free and frank exchange of views for the purposes of deliberation. Section 36 of the Act is a qualified exemption and we have therefore considered the public interest in this case.

We believe there is a general public interest in the disclosure of information as greater transparency makes Government more accountable and there is a public interest in being able to assess the quality of information and advice which is used in subsequent policy formulation. However, against this there is a public interest in ensuring that government decision-making can proceed in the self-contained space needed to ensure that it is done well. The withheld information relates to the exchange of advice between departmental officials and Ministers. We believe that, if officials were conscious that such advice made in an internal document could be made public, frankness would inevitably be inhibited, and decisions on shale gas development would be made without full consideration of the issues. We consider that were this information to be disclosed in the public domain then this may have a detrimental effect on the deliberation of government officials. In our view, therefore, we believe that the balance of the public interest lies in withholding the information you have requested.

### **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



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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 dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 2 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](mailto:foi@decc.gsi.gov.uk).

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,

Office of Unconventional Gas and Oil