



Department
of Energy &
Climate Change

Department of Energy & Climate Change

3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 060 4000
E: foi@decc.gsi.gov.uk
www.gov.uk/decc

Our ref: 13/0931

14 August 2013

Dear

RE: Freedom of Information Request – Reference 13/0931

Thank you for your Freedom of Information request of 17th July 2013 in which you asked for the following:

Copies of any and all minutes of meetings over the last 18 months involving anyone from DECC, and EDF, where the meetings specifically concerned the so-called “nuclear strike price”.

We have searched for the information related to your request and have identified that we hold information within the scope of your request. Having carefully considered your request and the public interest arguments both in favour and against disclosure, we have come to the view that all of this documentation is exempt from disclosure under the Freedom of Information Act. Further detail on the arguments for and against disclosure is 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.

The minutes DECC holds of meetings involving EDF contain information which relates to the formulation and development of Government policy on Contracts for Difference, across the Department and in our view section 35(1) (a) applies.

As you will be aware section 35 of the FOI is subject to the public interest balancing test. There is a general public interest in the disclosure of information; greater transparency makes the Government more accountable to the electorate; increases trust and also enables the public contribution to policy making to become more effective.

However, candid input from the energy industry, is an essential element of our policy making process, and the loss of that input would have an adverse impact on our ability to make sound and robust policy. Release of the information would be likely to inhibit third parties from fully engaging in such discussions with Government officials. The process of dialogue would be weakened if third parties did not feel able to be as open and frank with us, for fear of their views and assessments offered in the context of dialogue and analysis being made public. Releasing information of this nature would therefore inhibit the future provision of important information from stakeholders and could in turn have a detrimental effect on policy development which would be highly contrary to the public interest as it could impact on our objective to ensure secure supply of low carbon energy.

Accordingly, given the above considerations, it is our view that the balance of public interest in respect of this exemption favours withholding the information.

Section 40

Some of the information requested includes personal data. As you may be aware section 40(2) provides that information is exempt from disclosure where its disclosure would breach the any of the data protection principles. In our view the disclosure of the personal data in question would breach the first data protection principle that personal data shall be processed fairly and lawfully.

Section 41

Section 41(1) provides that information is exempt if disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person. Some of the information requested is information provided to the Department through the mechanisms of private forums, the discussions which were held on a confidential basis. This information is therefore subject to a duty of confidence and its disclosure would

constitute an actionable breach of confidence. We have therefore reached the view that the information is exempt from disclosure by virtue of section 41.

As you may be aware the duty of confidence has its own “in built” public interest test. We have also assessed the public interest in the context of the duty of confidence and are of the view that the public interest in retaining the confidence overrides any public interest in favour of disclosure.

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.

We are satisfied that the release of much of the information could damage and adversely affect the commercial position of EDF in the discussions on Final Investment Decision (FID) enabling for Hinkley Point C. Providing the information has the potential to reveal positions that have not be 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. Further as already alluded to above if the Department was unable to have a meaningful dialogue with business and other stakeholders this is likely to have an adverse effect on its own commercial interests. This again is contrary to the public interest. It is our view that the balance of public interest in respect of this exemption favours withholding the information.

Conclusion

Finally I should add that any contract agreed concerning the nuclear strike price will be laid before Parliament and published in line with the requirements of the Energy Bill, together with a summary of reports commissioned from expert external technical and financial advisers and a value for money appraisal. We believe that the publication of this information, in due course 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 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