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Our ref: **12/1656**

21 December 2012

Dear

**RE: Freedom of Information Request**

Thank you for your FOI request of 26 November 2012, in which you asked for the following:

*“In the Guardian on Saturday, 24 November, there was an interview with Ed Davey in which he describes the content of a letter sent by his private secretary to the prime minister's private secretary about John Hayes.*

*Please send me a copy of the full text of this letter.*

*Mr Davey told the Guardian there was no reply. However if a reply has now been received, please send me a copy of that too. “*

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).

In reply to your request we can confirm that the Department does hold information in the scope of your request. However, this information is being withheld under section 35(1)(a &b) of the FOI Act. Under Section 35 information can be considered exempt information if it relates to the formulation and development of Government policy, and ministerial communications. Section 35 is a qualified exemption and therefore subject to the public interest test.

Section 35(5) defines the extent of ministerial communications as communications between Ministers of the Crown, [or between Northern Ireland Ministers, or between Assembly Secretaries.] However, according to the ICO Awareness guide 24: *“communications between civil servants on behalf of their Minister are also likely to be included”*.

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/formulationofgovernmentpolicy.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/formulationofgovernmentpolicy.pdf)

We accept the public interest arguments in favour of disclosure as greater transparency makes government more accountable and increases trust between government and the public. There is a great deal of public interest in energy issues and in information relating to the formulation and development of the renewable energy policy.

However in this particular case, the public interest in withholding the information outweighs the public interest in releasing it. We believe it is in the public interest that communications between civil servants on behalf of ministers which is not already in the public domain are withheld to ensure that the private thinking space needed to ensure sound policy discussion is maintained and to maintain the convention of collective responsibility that is fundamental to the continued effectiveness of Cabinet government.

In the Scotland Office case EA/2007/0070, the Information Tribunal considered the convention in relation to s35(1)(b) and concluded that *“We accept that where collective responsibility of Ministers is engaged, there will nearly always be a public interest in maintaining the exemption.”* The Tribunal also commented that *“as with formulation of government policy under section 35(1)(a), timing is likely to be of paramount importance. Where the Ministerial communication is in relation to an issue that was “live” when the request was made, the public interest in preserving a “safe space” for Ministers to have a full and open debate, and the public interest in the Government being able to come together successfully to determine what may, in reality, have been a contentious policy issue, may weigh the balance in favour of maintaining the exemption.”*

The renewable energy deployment policy is a ‘live’ policy in its formulation stages and the release of the specific details of communications between the Secretary of State Ed Davey and the Prime Minister at this time, would not be in the public interest. There is a strong public interest in protecting a “safe space” for Ministers to have a full and candid debate on the renewable energy strategy – where they can consider the pros and cons without the risk of premature disclosure which might close off better options. If ministers thought that their views would be revealed publicly, the nature of their policy discussions on energy would be very different. It might deter ministers stating controversial or radical opinions in relation to any given policy or idea. This would have a detrimental effect on the quality of the decisions made at the highest level, undermining good government.

There is also a strong public interest in the Government being able to come together successfully to determine the way forward for the renewable energy strategy and present a united policy front to the public and the energy sector, once the internal debates have been concluded and the Ministers have accepted collective responsibility for their decisions. The full disclosure of interdepartmental consideration and communications between ministers at this

time may undermine the promotion of the renewable energy deployment strategy in the future.

**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 two months of the date of receipt of the response to your original letter and should be addressed to: **Information Rights Unit** ([foi@decc.gov.uk](mailto:foi@decc.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,