



Department
of Energy &
Climate Change

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

REDACTED

Our ref: FOI 13/1405

31 December 2013

Dear **REDACTED**,

Re: Freedom of Information Request – price freeze announcement

Thank you for your email of 8 October in which you asked the following:

Details of all communications, including all emails and text messages, to and from Special Advisers within the department in post on 24th September and included on the Government's official list (last published on 17 July 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62365/WMS-07-12.pdf) on the topic, or relating to, Labour's announcement on freezing energy prices, as announced on 24th September 2013, between the dates of 24th September 2013 and 1st October 2013.

This should include details of all communications, including all emails and text messages, between Special Advisers to the Prime Minister in post on 24th September and included on the Government's official list (last published on 17 July 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62365/WMS-07-12.pdf) and representatives of the Big Six Energy Suppliers on the topic, or relating to, Labour's announcement on freezing energy prices, as announced on 24th September 2013, between the dates of 24th September 2013 and 8th October 2013.

We are writing to advise you that following a comprehensive search of our paper and electronic records we can confirm that the Department does hold information within the scope of your request. We apologise for the delay in



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replying as it was necessary to extend the time of reply so as to consider where the balance of the public interest lay.

In accordance with your request, we are releasing the attached communications to and from special advisers regarding the Labour's energy price freeze announcement.

However, further information considered within your request is considered to fall within the following exemptions under the corresponding sections of the Freedom of Information Act 2000 ("the FOI Act"):

- 35 (Formulation of government policy)
- 36 (Prejudice to effective conduct of public affairs)
- 40 (Personal data)
- 42 (Legal professional privilege)
- 43 (Commercial interests)

The application of these exemptions to the information held within the scope of your request is discussed below.

Section 35 – formulation of government policy

Under section 35(1)(a) of the FOI Act information held by a government department is exempt information if it relates to the formulation or development of government policy. Section 35 confers a qualified exemption, and withholding information under this section is therefore subject to the public interest test (see section 2(2) of the FOI Act).

We accept that there are public interest arguments in favour of disclosure as greater transparency makes government more accountable and increases trust between government and the public. There is, of course, a great deal of public interest in energy prices and government policy on retail pricing.

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, including special advisers, regarding ongoing policy development are withheld to ensure that the private thinking space needed to ensure sound policy development is maintained. The public interest in the disclosure of the information held must be balanced against the need to ensure that all civil servants including special advisers can exchange information in a manner which allows for the free and frank exchange of views and opinions.



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The release of the specific details of communications regarding policy development between special advisers in the Department and others in the Department, and at No.10, would not be in the public interest. There is a strong public interest in protecting an “open space” for civil servants, including special advisers, engaged in policy development on key public policy issues as they arise without the risk of premature disclosure hampering full and candid debate and a robust decision making process. If special advisers thought that their advice on policy areas were to be revealed publicly, the nature of their such discussions would be necessarily limited and it might deter them from considering and discussing a range of ideas which are necessary to build good policy.

With regard to some of the information we are withholding under section 35, we consider that, were it held in the event of any appeal that section 35 did not apply, section 36 would apply to that information in the alternative. (Other information is being held solely under section 35 or solely under section 36.)

Section 36 – effective conduct of public affairs

Section 36(2) provides an exemption for information which, in the reasonable opinion of a Minister (see definition of “qualified person”), if disclosed, would, or would be likely to:

- inhibit the free and frank provision of advice ((b)(i)); or
- inhibit the free and frank exchange of views for the purposes of deliberation ((b)(ii)); or
- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs ((c)).

This exemption is subject to the public interest test.

There are a number of arguments supporting the view that it would be in the public interest to disclose this information. These include:

- a) the general public interest in understanding the working nature of relationships between ministers and those that work with them and between different arms of government;
- b) the public interest in being able to assess the quality of advice being given to ministers and subsequent decision making;
- c) the public interest in being able to understand the rationale for decisions and to assess the strength of arguments for and against a decision.



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However, we have also considered the arguments that it would be in the public interest to withhold documents of this type. In particular there is the need for discussions between civil servants, Ministers and special advisors of this kind to be candid and take place in an open environment.

On balance we have concluded that the public interest lies in withholding this information.

Section 40 – personal data

Some of the information you requested is being withheld as it is personal data exempt under section 40 of the FOI Act. Section 40(2) provides an absolute exemption (i.e. the public interest test does not apply) for information about identifiable individuals where this would breach the Data Protection Act 1998. Personal data of third parties 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. We do not think that it is fair to release the names of junior members of staff or third parties and do not think that any of the relevant conditions apply.

Section 42 – legal professional privilege

Section 42 of the FOI Act relates to information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Section 42 is a qualified exemption and therefore subject to the public interest 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, the Government needs to be able to receive comprehensive legal advice about the strengths and weaknesses of its position. Disclosure of such information could be prejudicial to Government's operations, with the possibility of inhibiting its ability to assess the legal implications of possible courses of actions and to defend itself from legal challenge where necessary. There is significant public interest in maintaining legal professional privilege in relation to such advice. Having considered the public interest test, it has been decided that the public interest favours withholding the relevant advice.

Section 43 – commercial interests

A small amount of the information within the scope of your request is being withheld as it is exempt under section 43(2) of the FOI Act. This provides that,



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subject to the public interest test, information is exempt, if its release would be likely to prejudice the commercial interests of any person, including the public authority holding it.

There is a public interest in ensuring transparency in Government's relationship with industry. However, there are public interest considerations in favour of withholding the information in order to ensure that the commercial interests of external businesses are not damaged or undermined by the disclosure of information which is not common knowledge and which could adversely impact their ability to operate and compete in the market. We consider the balance of the public interest to lie in withholding some of the information we hold under this exemption.

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 the Information Rights Unit (foi@decc.gsi.gov.uk).

Information Rights Unit (DECC Shared Service)
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

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

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