



Maureen Mills

By email to: request-529278-3c499f91@whatdotheyknow.com

Our ref: FOI-2018-0066

27 November 2018

Dear Ms Mills,

Thank you for your email of **30 October 2018** in which you requested:

"Dear Oil and Gas Authority,

You recently responded to Mr. John Wilkinson under your FOI reference: FOI-2018-0052, who had asked:

"Can you please confirm whether any change has been made to the obligation agreed with Aurora in October 2017 requiring the company to submit a planning application before the 30th September 2018 in relation to part A of the PEDL area?"

You confirmed that Aurora Energy Resources had applied to the OGA to "change the Retention Area Work Plan timing and the OGA is considering that request".

You concluded:

"This concludes the OGA's handling of your request ."

The timing requirement in question was to submit a planning application before the 30th September 2018. Lancashire County Council have confirmed to me that they have not received a planning application from Aurora and are not expecting anything in the next few weeks. This takes us past 31st October and into November. Therefore, I must conclude that you have indeed considered and adjudicated upon Aurora's request to change the timing obligation as regards a planning application. Considering LCC issued a Scoping Report letter on 27th March 2018, some 7 months ago, residents in PEDL 164 and environs have a right to know full details of the change requested by Aurora and what the OGA has allowed. Therefore I request full details together with copies of correspondence relating to background to the request for a "change", the outcome of the request and where it has been published for public access.

Thank you for your attention to my FOI request."



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1. We have considered your request under the Freedom of Information Act 2000 ('**FOIA**'), the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and where relevant, the Environmental Information Regulations 2004 ('**EIRs**').
2. Please find attached the information we hold in response to your request:
 - A letter confirming the change of retention area plans; and,
 - Request for a change to the retention area.
3. You will notice that some of the information has been redacted from the attached. While the OGA strives to disclose as much information as we are able, some information is exempt from disclosure under one or more of the exemptions/exceptions in FOIA and/or the EIR.
4. Having considered the information which falls within the scope of your request, we consider the information which has been withheld to be exempt under the following exemptions:
 - *Section 41(1) FOIA* (information provided in confidence)
 - *Section 43(2) FOIA* (commercially confidential)
 - *Section 40(2) FOIA* (personal information)

Where applicable, the following exceptions apply under the EIR regulations:

- *Regulation 12(5)(e) EIR* (commercially confidential)
- *Regulation 13(1) EIR* (personal data).

Section 41(1) FOIA (Information Provided in Confidence)

5. *Section 41(1) FOIA* provides that information is exempt from disclosure if it was obtained by the public authority from any other person (including another public authority) and the disclosure of the information would constitute a breach of confidence actionable by that or any other person.
6. The withheld sentence in the penultimate paragraph of Aurora's request letter, was submitted to the OGA under circumstances that are such that the information has the necessary quality of confidence to justify the imposition of



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an equitable obligation of confidence. To breach this confidence would firstly be “actionable” – i.e. Aurora could bring a legal case against the OGA for breach of confidence and the OGA considers that such as action would be likely to succeed.

7. The sentence relates to certain matters still under negotiation, which disclosure could jeopardise. This information is not in the public domain and Aurora were not required by law to submit this information to the OGA.
8. While *Section 41* is an absolute exemption which does not usually require consideration of the public interest, the OGA has nonetheless considered whether it is in the public interest for the requested information to be disclosed. In this particular case, the OGA considers that there is a greater risk, to both Aurora and the wider public, in releasing this information pertaining to ongoing negotiations, than by withholding it.

Section 43(2) FOIA and Regulation 12(5)(e) EIRs (commercially confidential)

9. *Section 43(2) FOIA* provides that information is exempt from disclosure if disclosure would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). *Regulation 12(5)(e) EIRs* provides that a public authority may refuse to disclose information to the extent the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
10. The OGA is withholding the same information, in respect of information pertaining to ongoing negotiations, under *Section 43(2) FOIA*. One of the functions of the OGA is to regulate the oil and gas industry. In exercising its regulatory functions, the OGA is made aware of various issues still under negotiation (for example, operations by contracted third parties, planning permission, financing and land hire or purchase).
11. Disclosure of such information, would, or would be likely to, provide competitors of Aurora and their partners with inside information (in some cases of a specific and unique or sensitive nature), which is likely to undermine their commercial positions (for example by such competitors forcing them to pay more for the goods, services or land that they will know that they need by the release of the information). All of this is likely to have negative repercussions for Aurora and its partners in a competitive environment.



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Public Interest

12. In withholding the requested information, the OGA has considered whether the public interest in withholding the information is outweighed by the public interest in disclosing the requested information. The OGA acknowledges that disclosure of the requested information can lead to greater transparency and enhanced scrutiny of public authorities. However, the need and desire for greater transparency must be balanced against the need to protect the commercial interests of both the public and private sectors and the OGA's objective of having an effective system of regulation.
13. Further, the public may rightly wish to know about sub surface operations being carried out in the United Kingdom, particularly if it is in an area local to them. However, disclosing this information pertaining to ongoing negotiations would likely discourage companies from conducting operations in the United Kingdom in respect of obtaining a cost effective and sustainable supply of domestically sourced gas, thus raising the price of gas to the consumer and making the UK more dependent on gas from abroad. This would be contrary to the public interest.
14. In light of the matters set out above, the OGA is withholding the information pertaining to ongoing negotiations.

Section 40(2) FOIA and Regulation 13(1) EIR (personal information/data)

15. There are also names, signatures and contact details in the withheld correspondence. This information is being withheld under *Section 40(2) FOIA* and *Regulation 13(1) EIR*.
16. The withheld correspondence contains the names, signatures and contact details of a number of individuals. This information is being withheld under *Sections 40(2) and 40(3A) FOIA* and *Regulation 13(1) EIR*. *Section 40(2)* provides that personal data is exempt from if one of the conditions in *40(3A)* is satisfied. One of the conditions in *Section 40(3A)* is a breach of any of the data protection principles in the *Data Protection Act 2018*. The data protection principles include that any processing of personal data must be fair and lawful. The provisions of *Regulation 13 EIR* mirror those of *Section 40(2) FOIA*.
17. The OGA considers that disclosure of the names, signatures and contact details of the individuals would breach the principles of fairness and lawfulness. The individuals whose details have been withheld have and are entitled to an expectation of privacy. In any event, the relevant individuals have not consented to their personal data being disclosed.



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18. As such, disclosure would meet neither the fair nor lawful processing principles. In light of this, this is being withheld under *Sections 40(2) and 40(3A) FOIA and Regulation 13(1) EIR*.
19. This concludes the OGA's consideration of your request.

Appeals procedure

20. If you are unhappy with the way the OGA has handled your request, you may request an internal review. A request for an internal review should be made within 40 working days of the date of receipt of the response to your request and should be addressed to:

FOI Manager
Oil and Gas Authority
21 Bloomsbury Street
London
WC1B 3HF
Email: foirequests@ogauthority.co.uk

21. Please quote the reference number above in any future communications with regard to this request.
22. If you are unhappy with the outcome of the internal review, you may contact the Information Commissioner at www.ico.org.uk or at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

FOI Officer