



Oil & Gas
Authority

21 Bloomsbury Street
London WC1B 3HF

Helen Chuntso

By email to: request-513381-917d8083@whatdotheyknow.com

Ref No: FOI-2018-0048

25 January 2019

Dear Ms Chuntso,

INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST FOI-2018-0048

Background

1. I am writing in response to your request for an internal review of the above case, dated **9 November 2018**.
2. I have now reviewed the Oil and Gas Authority's ('**OGA**') response to your original request (the '**Response**'), dated **6 November 2018**. A copy of that Response is attached to this letter for completeness.
3. In your original request of **28 August 2018** (the '**Original Request**') you asked:

***"[REQUEST 1]** Please provide a copy of all email communications between OGA and Cuadrilla (Resources), detailing Cuadrilla's provision of the company insurance, to include*

- i) the dates of all communications*
- ii) the extent of the policy cover - including the total total liability covered*
- iii) any exclusions to the policy.*

***[REQUEST 2]** Please detail **[Request 2a]** and **[Request 2b]** explain how the insurance criteria of 'Energy Package - including Onshore Property and Operator's Extra Expense Public Liability, Pollution Liability and Products Liability Excess Public Liability, Excess Pollution Liability and Excess Product Liability' provides cover for*

- i) third party liability,*
- ii) environmental liability*
- iii) loss of well control*

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Please provide confirmation

[REQUEST 3] *that you are satisfied that the insurance criteria on PEDL 165 are met by the operator*

[REQUEST 4] *that 'an additional £40M limit for any one occurrence or series of occurrences' is satisfactory, (if this is still the 2018 limit)" "*

4. The OGA responded to your initial request by disclosing the majority of the information that it held, but withheld certain information such as the identity of the insurance providers, exact costs and levels of cover, policy number, total liability, names, signatures and contact details.
5. On **9 November 2018**, you requested an internal review into the way your request was handled. Specifically of the use of the following exemptions/exceptions: Section 41(1) FOIA (Information provided in confidence) Section 43(2) and Regulation 12(5)(e) EIRs (commercially confidential).
6. I note that you have not challenged the exemptions/exception for withholding personal information under *Sections 40(2) and 40(3A) FOIA and Regulation 13(1) EIR*, therefore I have proceeded on the basis that you are content with the application of such and I will not repeat the arguments previously made in the OGA's response to your original request. For completeness, I am satisfied the OGA was also entitled to rely on those exemptions/exception.

REQUEST 1 and 2(a):

Exemptions/exceptions

a) Sections 41(1) (information provided in confidence) and 43 (1) and (2) FOIA (trade secret, commercial confidential); and, Regulations 12(5) (c) and (e) EIR

7. Turning to the exemptions under *Sections 41(1) (information provided in confidence) and 43(2) FOIA (commercial confidential), and Regulations 12(5) (c) (intellectual property) and (e) EIR (commercially confidential)*, I consider the application of these exemptions/exceptions below.
8. I note that your grounds for challenging these exemptions/exceptions were: *"It is clearly not in the public interest to withhold this information; the public should be entitled to know to what extent the public indemnity cover is adequate in the event if an operator causing adverse event damaging life or property."* Therefore, I shall consider this public interest aspect of the application of the exemptions/exceptions.
9. The documentation you have requested contains information that would not routinely be in the public domain (e.g. concerning commercially sensitive financial data and information on third parties entering into any joint venture with the main party), and would be of benefit to Cuadrilla's and its third-party supplier's competitors were it to

be released into the public domain. It also contains certain information that is covered by intellectual property rights.

10. One legitimate economic interest in the information held is that it could reveal Cuadrilla's well costs, (for example information on costs that are contained in the insurance are specific to Cuadrilla's current exploration activity and as such relate to the cost of the well, enabling competitors to calculate the well costs from them via a relatively simple method).
11. This is just one example as there are, in fact, a range of insurance costs and levels of cover that would likely lead to the disclosure or calculation of costs for several commercially sensitive goods and services, procured by Cuadrilla from various third parties.
12. In the original response, *section 43(2) FOIA* was relied on (*prejudice to commercial interests*) and this would fall into the OGAs business of regulating the Oil and Gas industry. On further examination of the information, and as referenced in the ICO's guidance on this, the information being withheld *also* falls into the category of *section 43(1) (trade or business secret)* – that the information being withheld constitutes a business secret.¹
13. ICO guidance on what a business secret includes:
 - costs information, such as how much money an organisation spends on product development;
 - pricing information, such as how much a company plans to charge for a product it sells;
 - supplier lists and contact details; or
 - plans for the development of new products / the discontinuance of old products.
14. Information that falls into the above categories is included in the information we hold, particularly relating to the first two bullets.
15. It should also be considered whether or not the commercial interests of the company or companies who have made the applications would be prejudiced by the release of the information.
16. Having seen the information we hold, I have concluded that, were the information to be made public, it is at least likely that competitors would take advantage of such information to gain an unfair commercial advantage (for example, by undercutting the insurers and their underwriters and/or by forcing Cuadrilla to pay more for various goods and services).

¹**Regulation** – public authorities who undertake regulatory activity may hold commercially sensitive information received in the course of their investigations or related to their functions, for example the issuing of licences – see <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

Public Interest

17. The assertion that *"It is clearly not in the public interest to withhold this information; the public should be entitled to know to what extent the public indemnity cover is adequate in the event of an operator causing adverse event damaging life or property"* assumes that the information typically contained in such insurance cover would be of immediate value to the public by detailing exact costs for various goods and services beyond what was already known and in the public domain anyway.
18. The OGA does not consider that this request meets the criteria for such circumstances - as the *"public good"* would not be satisfied by releasing the information in question, not least as it is only of interest to the *"private interests of the requester"* and a limited number of other people directly involved.
19. Indeed, the release of such information would be contrary to the public interest as such disclosure is likely to impact adversely the particular commercial interests of the companies involved (as previously referenced) and discourage companies in the OGA's jurisdiction and other third-party organisations from sharing information with the OGA. This would adversely affect the consideration by the OGA of the licensee's licence application as well as the licensee's commercial (including intellectual property) rights.
20. Further, licensees would be less likely to provide the levels of information they currently do in future applications were it to be disclosable in this way, and this in turn would likely inhibit the OGA in the discharge of its licensing functions and the matters to which it must have regard including maintaining a stable and predictable system of regulation which encourages investment.
21. It should be noted that, in both the answer to your original request and in answer to your earlier request (FOI-2018-0011 – again regarding Cuadrilla's insurance), that the higher level/overall cover figures of: £40m GBP for Excess Public Liability, Excess Pollution and Excess Product liability; £10m GBP for one occurrence of Public Liability, Pollution Liability and Product liability; \$25M USD for Onshore Property and Operators Extra Expense under the Energy Package and \$1m USD in respect of any one occurrence in respect of Care, Custody and Control were all disclosed and provide the public with the high-level details of Cuadrilla's cover.
22. I consider that the appropriate balance has therefore been struck between providing assurance to the public and safeguarding genuinely sensitive commercial information received from the licensee/operator.
23. In regard to the public interest, *Section 41 FOIA* is an absolute exemption where no test of the public interest is required (though noting that the public interest considerations referenced would also apply to this exemption).

REQUESTS 2(b), 3 and 4

24. In relation to your Requests 2(b), 3 and 4, you have either asked for legal advice on how insurance policies work or the OGA's views on certain matters related to that

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insurance, on which we do not hold the information you have requested. As has been stated previously, the insurance is in line with general Industry standards to provide the necessary cover in such circumstances.

25. This concludes my review of the handling of your request. I have found that the OGA did apply the exemptions/exceptions correctly and am therefore not, on this occasion, recommending the release of any further material.

26. If you are unhappy with the outcome of this internal review, you may contact 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,

[Signed]

Hedvig Ljungerud
Director of Strategy
OGA
