



Oil & Gas Authority

21 Bloomsbury
London WC1B 3HF

Benjamin Dean

By email to: request-477940-90f65945@whatdotheyknow.com

Our ref: FOI-2018-0016

14 May 2018

Dear Mr Dean,

Thank you for your email of 15 April 2018 in which you requested:

"Dear Oil and Gas Authority,

Please treat this email as a request under the Environmental Information Regulations 2004, alternatively the Freedom of Information Act 2004.

Please advise if any of the 14th Round Licensed Operators have applied to vary their Initial Term Schedule 3 Work Commitments in their licence dated 16/9/16 commencing 21/7/16.

In the event a licence operator has applied please provide copy correspondence of the request and the OGA response."

1. We have considered your request under the Freedom of Information Act 2000 (**FOIA**) and, where relevant, the Environmental Information Regulations 2004 (**EIRs**).
2. 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.
3. Firstly, the OGA considers that the very fact that companies may have applied to vary their terms could affect the market position of those companies if their identities were revealed and that releasing any information which could help to identify them, including the number of companies that it applies to, could also have this effect. Therefore, the OGA neither confirms nor denies how many (if any) companies have applied to vary their terms and who they are.

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4. Secondly, having considered the information which may fall within the scope of your request, if held, we consider such information would be exempt under:
 - i) *Section 43(2) FOIA and Regulation 12(5)(e) EIR* (commercially confidential);
 - ii) *Section 41(1) FOIA and Regulation 12(5)(f) EIR* (Information provided in confidence/interests of the person providing the information); and iii) *Section 40(2) FOIA and Regulation 13(1) EIR* (personal data).
5. A detailed explanation of the reliance on each of these exemptions/exceptions is set out below.
 - i) Section 43(2) and Regulation 12(5)(e) EIRs (commercially confidential)**
6. 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) of the 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.
7. The OGA is withholding information in respect of which companies, if any, have applied to vary their Initial terms and related correspondence, under Section 43(2) FOIA and Regulation 12(5)(e) EIR.
8. One of the functions of the OGA is to regulate the oil and gas industry. In exercising its regulatory functions, the OGA considers applications for licences for oil and gas exploration and any applications to vary the terms of any resulting licences. In submitting an application to vary their terms, such companies would typically have been required to submit information that included prospective resources, available funds, costs, certain geological information, negotiations with landowners and other authorities and any negotiations or problems with partner organisations, including that which is not already in the public domain.
9. Disclosure of this information, and which companies have so applied, would likely enable any such companies' competitors and prospective future partners to more accurately estimate their company financial strengths, prospects, assets, costs and liabilities and thus for example negotiate or compete from an unfair position of advantage, thereby limiting such companies ability to negotiate the best deals for themselves and continue to attract the necessary funding and partners. This would effectively weaken their position in a highly competitive environment.

Public Interest

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10. 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. 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.
11. The information requested was provided to the OGA in the discharge of its statutory functions and in pursuance of its statutory and principal objectives. The OGA considers that should the requested information be disclosed this would inhibit companies operating on the United Kingdom Continental Shelf (UKCS) from being as open and frank as they are currently being, may discourage companies from disclosing the levels and types of information they are currently providing and may lead to companies adopting a more restrictive approach in the information shared with the OGA. While the OGA has statutory information gathering powers, should it become necessary for the OGA to obtain information by way of relying on its statutory powers, it will inhibit the OGA in the discharge of its functions and will make information gathering more time consuming and costly.
12. The OGA does not consider that revealing who has applied, the financial, geological and legal/political details of any companies who may be in the process of applying for variations to their terms, would be of any greater service to the public that would outweigh the genuine harm that could be brought to such companies as a result.
13. In light of the matters set out above, the OGA considers that disclosure of details of such companies' applications, financial, geological and legal/political details, would, or would be likely to prejudice their commercial interests. Further, the OGA considers that the public interest in withholding the requested information outweighs the public interest in disclosing the requested information. As such any of the requested information that may exist is being withheld pursuant to Sections 43(2) FOIA and 12(5)(e).

ii) Section 41(1) FOIA and 12(5)(f) EIRs (Information provided in confidence/interests of the person providing the information)

14. Also, in respect of the same information, Section 41 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. Regulation 12(5)(f) provides that a public authority may refuse to disclose information to the extent that disclosure would affect the

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interests of the person providing the information in certain circumstances. Those circumstances include where the person did not supply it in circumstances such that that or any other public authority is entitled to disclose it and the party has not consented to disclosure.

15. The information that would typically be provided to the OGA by companies applying to vary their terms, would be done so on the understanding that it would remain confidential and not be disclosed to third parties.
16. As set out above, any information submitted would include commercially sensitive information in respect of such companies financial, geological and legal/political details and also details of any third parties working with such companies. Some of the information could also have been provided by third parties, to the companies and ultimately onwards to the OGA. This information would not currently be in the public domain. This information would typically be submitted by such companies in the course of seeking amendments to their initial terms and as such it has the necessary quality of confidence to justify the imposition of an equitable obligation of confidence. In addition, the information would have been provided, both between the companies and the OGA and between those companies and their partners, in circumstances that created an obligation of confidence and disclosure of that information would result in a breach in the obligation of confidence.
17. To breach this confidence would firstly be “actionable” – in that the parties concerned could bring a legal case against the OGA for breach of confidence and we consider that such an action would be likely to succeed. Further the OGA considers that disclosure of the information would have a ‘chilling effect’ on the nature and type of information submitted by operators, where they are not obliged to do so by law, which would inhibit the OGA in on the nature and type of information submitted by operators which would, in turn, inhibit the OGA in the discharge of its principal objective¹ and statutory functions². The OGA considers that this ‘chilling effect’ would undermine the OGA’s objective of creating a stable and effective system of regulation and as such is contrary to the public interest.
18. In light of the matters set out above, the OGA is also withholding any information it may have received in respect of companies financial, geological and legal/political details and details of any third parties working with such companies, under Section 41(1) FOIA and Regulation 12(5)(f) EIR.

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

¹ To maximise the economic recovery of oil and gas in the UK Continental Shelf.

² Including the enforcement powers.

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19. OGA are also withholding any names, signatures and contact details of individuals that may be in the information. This is being withheld under *section 40(2) FOIA and Regulation 13(1) EIR*. Section 40(2) provides that personal data is exempt from disclosure where disclosure would result in a contravention of one or more of the data protection principles or would contravene Section 10 of the Data Protection Act 1998 ('**DPA**') which prohibits processing likely to cause damage or distress to a data subject. The data protection principles includes that any processing of personal data must be fair and lawful and must comply with one of the conditions either in schedule 2 or 3 of the DPA. The provisions of Section 13 EIR mirror those of Section 40(2) FOIA.
20. The OGA considers that disclosure of the names, contact details and signatures of the individuals would breach the principles of fairness and lawfulness.
21. In particular, the individuals whose names are redacted do not have public facing roles and are acting in good faith in the discharge of their employment duties. In some cases those involved in the correspondence are acting as public servants. Given that the individuals are discharging their employment duties, and in some cases acting as public servants, the OGA considers that they have and are entitled to an expectation of privacy. In any event, the relevant individuals have not consented to their personal data being disclosed.
22. The OGA further considers that disclosure of the names of the individuals would, or would be likely to result in them suffering from undue harassment over and above the level normally expected to be tolerated by a public servant or those acting in an employment capacity on behalf of a private company. The OGA considers that disclosure of the names, signature and contact details of the individuals and the identity of the insurance provider would breach the data protection principles of fairness and lawfulness. In light of this this is being withheld under Section 40(2) FOIA and 13(1) EIR.
23. This concludes the OGA's handling of your request.

Appeals procedure

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:

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

Please quote the reference number above in any future communications with regard to this request.

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