



Oil & Gas
Authority

21 Bloomsbury Street
London WC1B 3HF

Benjamin Dean

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

Ref No: FOI-2018-0016

4 July 2018

Dear Mr Dean,

INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST FOI-2018-0016

Background

1. I am writing in response to your request for an internal review of the above case, dated **15 May 2018**.
2. I have now reviewed the Oil and Gas Authority's ('**OGA**') response to your original request (**the 'Response'**), dated **14 May 2018**. A copy of the Response is attached to this letter.
3. In your original request of **15 April 2018** (the '**Original Request**') you asked:

"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."

4. The OGA responded by withholding the requested information under *sections 40(2), 41(1) and 43(2)* of the Freedom of Information Act 2000 ('**FOIA**') and, where relevant,

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under *Regulations 12(5)(e), (f) and 13(1)* of the Environmental Information Regulations 2004 ('EIRs') (*commercial confidentiality, information provided in confidence/interests of the person providing the information and personal information*).

5. The OGA also refused to confirm or deny whether any companies had, indeed, applied to vary their terms and the number of such companies if any had.
6. On **15 May 2018**, you requested an internal review into the way your request was handled. In your request for an internal review you asked:

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Oil and Gas Authority's handling of my FOI request '14th Round Work Commitments'.

To refuse my request is not reasonable and against the 'public interest' not explainable by commercial confidentiality.

A PEDL operators work commitment is public information available on your OGA data website. Should a 14th round PEDL operators work commitment change in order to move the PEDL from its Initial Term to its Second Term then it is clearly in the public interest that the work commitment changes are in the public domain. The changes should not be considered commercially sensitive and confidential.

Please provide the information as requested in my FOI.

7. I note that you have framed your request for an internal review around the information about a company's work commitment being "*on the OGA data website*" and, therefore, that any changes should also be placed in the public domain. This refers to changes that have been agreed and, in principle, I think that this is correct. Such information, once the decision has been made, is supplied on request.
8. However, it should also be noted that, until such extensions to terms have been agreed, and any Deeds of Variation issued to that effect and any parts of the OGA website amended to reflect such changes, there are likely to be ongoing commercial discussions. To reveal what such discussions might contain (and indeed even with which company they were taking place) is likely to impact adversely on the company and its value, including its share price (and be subject to a potential sharp correction if the final outcome was not as predicted), and the OGA's ability to fulfil its licensing functions.
9. For information, licensees that have made unsuccessful applications for variations would be among those whose licences expire at the end of end of July. This would be evident from the deletions to the web listing.

Review

10. Your original requests were for:

- a) **REQUEST 1:** *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”; and,*
- b) **REQUEST 2:** *In the event a licence operator has applied please provide copy correspondence of the request and the OGA response.*

Dealing with each in turn:

REQUEST 1

11. The OGA replied that *“the OGA neither confirms nor denies how many (if any) companies have applied to vary their terms and who they are.”* However, on review, I do not consider such a response appropriate in these circumstances. In response to your information request: yes, the OGA received three applications from 14th Round Operators to vary their Initial Term Schedule 3 Work Commitments.

REQUEST 2

12. Request 2 was for the applications that support the decision whether or not to vary the licence and the OGA’s response (a *“copy correspondence of the request and the OGA response”*). The OGA holds such information but is not providing a copy of the applications or details of the applicants.

Exemptions/exceptions

13. It is worth noting that, in particular, such applications under consideration by the OGA may be rejected, contain information that would not routinely be in the public domain (e.g. concerning commercially sensitive financial and geological data), and would be of benefit to competitors even after any variations to the terms had been decided.
14. One legitimate economic interest in the information held is that it details a licensee’s assessment, timing and commercial strategy in respect of certain aspects of the onshore oil and gas supply chain – such information being market sensitive in a highly competitive environment. The disclosure of such information would likely have an impact on such a company’s value if disclosed outside the normal course of such information disclosure (e.g. if the timing and strategy were known).
15. 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

16. 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.
17. Information that falls into the above categories is included in the information we hold.
18. We also need to consider 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. Having seen the information we hold, I have concluded that, were the information to be made public, there would be much more than a likely chance that competitors would take advantage of such information to gain an unfair commercial advantage.

Public Interest

19. The assertion that “*To refuse my request is not reasonable and against the 'public interest' not explainable by commercial confidentiality*” assumes that the information typically contained in such applications would be of immediate value to either the public or even any local residents who may be concerned, by detailing physical activities that would be immediately happening in their area beyond what was already known and in the public domain anyway.
20. 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.
21. The information that would typically be contained in such applications would be, for example: geological studies of the ground, financial information and business models – such information being market sensitive in a highly competitive environment. All of which would mean little to most members of the public and would not tell them anything about what may or may not be happening in their local area beyond what would have already been stated by operators and, in some cases, would have to be disclosed by law anyway (e.g. to local planning authorities).

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>

22. On the contrary, the release of such information would be against 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 intellectual property rights.
23. Further, licensees would be less likely to provide the completeness of the information in future applications were it to be disclosable in this way, and this would inhibit the OGA in the discharge of its licensing functions.
24. I note that you have not specifically disputed reliance on *section 40(2) FOIA /Regulation 13 (1) EIR (personal information)* and *section 41(1) FOIA and Regulation 12(5)(f) EIR* and, as such, I will not repeat the arguments already made in the OGA's response to your original request. For completeness, I am satisfied the OGA was also entitled to rely on these exemptions/exceptions.
25. Therefore, in consideration of the above, I conclude that:
- a) reliance on a refusal to confirm or deny whether any companies had applied to vary their terms, and the number of such companies if any had, was incorrect;
 - b) the OGA was entitled to rely on the exemptions/exceptions under *section 43(2) FOIA and Regulation 12(5)(e) EIR*, and that to do so was reasonable;
 - c) the OGA should also have applied the exemption at *section 43 (1) FOIA*; and,
 - d) the exemptions/exceptions under *section 41(1) FOIA /Regulation 12(5)(f) EIR* and *section 40(2) FOIA /Regulation 13(1) EIR* were reasonably applied.
26. This concludes my review of the handling of your request.
27. 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
Strategy Directorate
OGA