

Benjamin Dean

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

Ref No: FOI-2018-0016

18 January 2019

Dear Mr Dean,

I write further to your complaint to the Information Commissioner regarding your request for information, dated **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."

Background

1. The OGA responded to your request on **14 May 2018**, refusing to confirm or deny whether it held the information on grounds of commercial confidentiality. On **15 May 2018**, you requested an internal review of that response. Having considered the case further, the OGA sent you the outcome of the internal review on **4 July 2018**, confirming that it held three [3] applications (for the avoidance of doubt this was the position as at the date of your information

request) but upholding the original position regarding the remainder of the request.

2. The OGA understands that you complained to the Information Commissioner's Office ('ICO') about the OGA's handling of your request. On **29 November 2018**, the ICO notified the OGA of your complaint and requested that the OGA provide a substantive response to it by 31 December 2018, which was extended to **18 January 2019**.
3. In that ICO notification, the Information Commissioner stated: "*Where possible the Information Commissioner prefers complaints to be resolved by informal means, and we ask both parties to be open to compromise. [...]. After looking at [the ICO] guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.*"
4. The OGA has undertaken such a review.
5. Following the review, we are writing to you with further information. We will be writing to the Information Commissioner with a copy of this letter.

The Review

6. The OGA has considered the effect that the passage of time has had on the sensitivity of the previously withheld information, contacted the companies again for their views, and in light of the above taken a view on release of the previously withheld information.
7. Further, the OGA has also considered the fact that the three [3] companies in question had applied for extensions is no longer confidential.
8. We now also consider that some of the previously withheld information in the companies' letters requesting a variation of their work commitments is no longer confidential and can therefore be released. I should emphasise however that, as at the date of your request and the internal review, the OGA maintains that this information was confidential and the exemptions/exceptions under FOIA/EIR applied at that time. A redacted copy of each of the letters referred to is attached to this response.
9. Also attached are copies of the three [3] OGA letters of Direction, from 17 July 2018, which extend the drill-or-drop period for each of the licence holders (with the personal data redacted from each letter). This information post-dates your original request but is being provided by ourselves in the interests of transparency.

Provided information

10. Your request has been considered under the *Freedom of Information Act 2000* ('**FOIA**') and, where applicable, the *Environmental Information Regulations 2004* ('**EIRs**').
11. We are providing the letters (redacted) we received from (i) **Egdon Resources**, (ii) **Reach** and (iii) **Island Gas LTD (IGas)**, which were sent to the OGA in February 2018 by way of application for an extension to the drill-or-drop period. These redacted letters are being provided to you in further response to your information request, following our review.
12. The redacted information in the licensee letters has been withheld as the OGA considers that a number of the exemptions/exceptions as set out in FOIA and the EIR are still engaged, and that the public interest is in favour of withholding the redacted information – as was the case as at the date of the request and the internal review.
13. The redacted information in the OGA's letters of Direction has been withheld as the OGA considers that the exemptions/exceptions relating to personal data apply (see paragraphs 15 to 18 below).
14. The application of the relevant exemptions/exceptions is explained in greater detail below, under the following:
 - a. *Section 40 FOIA and Regulation 13(1) EIR* – Personal Data.
 - b. *Section 41 FOIA* (confidential information), *Section 43 (1) FOIA* (trade secrets), and *Section 43(2) FOIA* (commercial interests).
 - c. *Regulation 12(5) (e) EIR* (confidential commercial/industrial information).
 - d. *Regulation 12 (5) (c) EIR* (intellectual property),
 - e. *Regulation 12 (5) (d)* (confidentiality of proceedings of a public authority).
- a. **Sections 40(2) and 40(3) FOIA and Regulation 13(1) EIR - Personal Data**
15. Contained within some of the documents are names, contact details, positions, and in one case qualifications, of a number of individuals. This information is being withheld under *Sections 40(2) and 40(3A) FOIA* and *Regulation 13(1) EIR*.

16. *Section 40(2)* provides that personal data is exempt from the requirement to provide it if one of the conditions in *Section 40(3A)* is satisfied. One of the conditions in *Section 40(3A)* is that disclosure of the information would contravene any of the data protection principles in the *Data Protection Act 2018* ('**DPA**') – or, as at the date of the request, the predecessor Data Protection Act 1998. The data protection principles include the principle 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, contact details, positions and qualifications 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.
18. As such, disclosure would meet neither the fair nor lawful processing principles. In light of this, we are continuing to withhold this information under *Sections 40(2) and 40(3A) FOIA* and *Regulation 13(1) EIR*.

b. *Sections 41, 43 (1) and (2) FOIA, and Regulation 12(5)(e) EIR – Confidential information and Commercial Interests*

19. The withheld information consists, in addition to the information referred to at paragraph 17 above, of confidential and sensitive commercial information the disclosure of which is likely to seriously harm the company's commercial position.
20. *Section 41 FOIA* provides that information is exempt information if it was obtained by the public authority from any other person and its disclosure would constitute an actionable breach of confidence.
21. *Section 43 (1)* provides that information is exempt from disclosure if it constitutes a trade secret.
22. *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).
23. *Regulation 12(5)(e) EIR* provides that a public authority may refuse to disclose information to the extent that its disclosure would likely adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
24. In exercising its regulatory functions, the OGA obtains information such as commercially sensitive financial and geological data, all of which are of a commercial and confidential nature.

25. The OGA considers that disclosure of that information referred to at paragraph 19 above would likely prejudice the commercial interests of the three [3] companies, and their partners, by allowing competitors to gain insight into their expected returns and also into information of a potentially price sensitive nature which, as public AIM listed companies, would have compliance implications as well as putting them at a disadvantage in a competitive environment.
26. Furthermore, there are among others legitimate concerns that these companies' supply chains could be severely disrupted if they were targeted by external parties, causing them to withdraw from any potential joint ventures and also having price and supply implications, again in a highly competitive environment.
27. There are also among others considerations over the potential access to and any necessary acquisition of land which, again, is likely to be vulnerable to external interference, thus discouraging land owners from cooperating with the companies and the authorities.
28. Any and all of these considerations would also likely affect the value of the companies concerned, either driving it down or falsely inflating it, only for it to be vulnerable to a sharp correction later.

c. *Regulation 12 (5) (e) EIR - Confidential Commercial or Industrial Information*)

29. The OGA also considers that the information which is environmental information falls within *Regulation 12 (5) (e) EIR* - for similar reasons to those set out above, among others.

Public interest.

30. In determining whether these sections and regulations apply, and in carrying out the public interest balancing exercise, the OGA has considered among other things public interest defences to an action for breach of confidence, and whether the public interest in maintaining the exemption/exceptions is outweighed by the public interest in disclosing the requested information.
31. 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 the companies and their interests in maintaining confidentiality, and the OGA's objective of having an effective system of regulation.

32. The disclosure of the requested information would mean that the OGA's ability to have free and frank discussions with parties would be adversely affected, with detrimental consequences for the OGA's ability to fulfil its statutory functions and objectives; and it would prejudice the commercial interests of the licence holders. There is also a public interest in ensuring that companies can have confidence that their confidential information will not be disclosed.
33. The OGA, therefore, considers that the public interest in disclosing the information is outweighed by the public interest in maintaining confidentiality and the exemptions/exceptions.

d. Regulation 12 (5) (c) EIR - Intellectual Property

34. In addition to the exemptions/exceptions that the OGA has previously cited, the OGA also contends that some of the withheld information falls within the exception at *Regulation 12 (5) (c) EIR – intellectual property*. For the reasons set out above, the OGA considers that the public interest in disclosing the information is outweighed by the public interest in maintaining the exception.

e. Regulation 12 (5) (d) EIR - Confidentiality of proceedings of a public authority)

35. Finally, the OGA also contends that some of the withheld environmental information referred to above falls within the exception at *Regulation 12 (5) (d) EIR – its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law*. For the reasons set out above, amongst others, this information is confidential, the OGA considers that the public interest in disclosing the information is outweighed by the public interest in maintaining the exception.
36. The OGA will be writing to the Information Commissioner with a copy of this letter, and we hope that this matter may now be resolved. As you know, if you wish to contact the Information Commissioner separately, she can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours faithfully,

[Signed]

Dr Russell Richardson

General Counsel and Company Secretary