



Ruth Hayhurst

By email to: request-682092-108f73bb@whatdotheyknow.com

Ref No: IR3 (of FOI-2020-0049)

4 August 2021

Dear Ms Hayhurst,

INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST FOI-2020-0049

A. Introduction

1. I write to you in response to your request for an internal review of the above case, dated **11 September 2020**.
2. I also write in response to your follow up communications of 17 June, regarding the same subject, where you asked “*On 9 October 2020, you wrote that an internal review was underway. I am not aware of any update since then to my request. Please let me know when the internal review will be completed*” and “*Is there a consent from the Oil & Gas Authority in place for extended well testing at Cuadrilla's Preston New Road shale gas site, Little Plumpton, Lancashire?*” This, essentially, asks the same question as your original request of 5 August 2020 and I shall therefore address it as part of this internal review.
3. I have now reviewed the Oil and Gas Authority's ('**OGA**') response to your original request (the '**Response**'), dated **3 September 2020**. A copy of the Response is at **Annex [1]**. While there is no time limit, I apologise for the time it has taken to respond to your request.



4. In your original request of **5 August 2020** (the ‘**Original Request**’) you asked for confirmation of whether or not Cuadrilla had sought to extend this consent (for an Extended Well Test). A copy of the Original Request is set out at **Annex [2]**.

5. In summary, for the reasons set out below, I consider that the OGA’s handling of the Original Request to have been reasonable. However, while our original position last August, to neither confirm nor deny, was reasonable, we can confirm that there is no current consent in place for an EWT at the PNR site and no application is under consideration.

B. Background

6. In the original response, provided on **3 September 2020**, the OGA relied on *Section 43(3) FOIA* and *Regulation 12(5) (e) EIR* and did not confirm or deny whether it had received an application to extend the consent from Cuadrilla. The OGA considered that confirming or denying whether any application had been received at that time would or would be likely to prejudice the commercial interests of Cuadrilla.

7. On **11 September 2020**, you expressed dissatisfaction with the OGA’s handling of the Original Request. In particular, you stated that you were dissatisfied with not being provided with the confirmation and you once again asked to be provided with it. You have stated that the exemption/exception under 43(1) FOIA and 12(5)(e) EIR do not apply, for reasons listed below.

8. From reading your Internal Review request the grounds for your internal review appear to be:
 - Cuadrilla does not have shares listed,
 - there are “exceptional circumstances” (possibly a reference to the exceptional circumstances around the one previous pro-active publication referenced in our previous response. Reasons listed by yourself as; the number of objections, the seismic events of 2019, that it was the first horizontal well and the first high volume fractures since 2011),



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- that there is a moratorium on Fracking in place,
- that the OGA has no commercial interest in the site,
- that Cuadrilla don't have a press office and were not providing the information,
- that the OGA says it is "committed to being open and transparent" and also that its effective system of regulation would be best served by transparency/disclosure,
- no other operators are currently drilling onshore for shale and therefore that Cuadrilla "has no competitors".

9. A copy of your **11 September 2020** email is attached to this response and marked **Annex [3]**.
10. The findings of my internal review are set out below.

C. Internal Review

11. It should be noted that an internal review is not a new consideration of the Original Request. Rather, it looks at whether the OGA's handling of the Original Request and whether any exemptions/exceptions relied on were reasonable. If any of the exemptions/exceptions relied on were subject to the public interest test, I will also consider whether the public interest test was properly applied.

In addition to considering whether the exemptions/exceptions were reasonable applied, I will also consider the various submissions that you made in your internal review request (which I have summarised at paragraph 8).

Re: Exemptions used Section 43(1) FOIA and Regulation 12(5)(e) EIRs (Commercial confidentiality)

12. I note from the Response that the OGA neither confirmed nor denied whether it had received the information contained in the Original Request i.e. whether or not it had received a request from Cuadrilla to extend the time period to carry out Extended Well Pressure Testing. The Response stated that the OGA considered that confirming or denying this information would provide Cuadrilla's competitors with information as to its future intentions and capabilities and would undermine Cuadrilla's position including by way of influencing its share price in the short term or persuading individuals to take a certain course of



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actions which they may not otherwise have done. In considering the public interest, the OGA was of the view that the balance of the public interest fell in favour of maintaining Cuadrilla's commercial confidentiality such that the information requested should not be disclosed.

13. Having reviewed all of the information, including the information provided in the 11 September 2020 email, I consider that the Response was reasonable in a number of respects. First, I note the Response was provided within the statutory timescale of 20 working days. Second, I consider that the commercial confidentiality exemption in FOI and exception in EIR was engaged and that it was also reasonable for the OGA to neither confirm nor deny whether the information requested was or was not held.
14. I agree with the rationale in the Response that disclosing at that time whether Cuadrilla had or had not submitted the request was a commercially sensitive matter and that disclosing that information to the world would have disclosed commercially sensitive information to Cuadrilla's competitors. Further, I agree that disclosure of the requested information would or would have been likely to influence Cuadrilla's share price and may have influenced shareholders or potential shareholders to act in a way that would not ordinarily have done without the disclosure of the information contained in the Original Request.
15. I have also considered the rationale as set out in the Public Interest Test and consider the rationale to be reasonable and appropriate.
16. I shall now turn to the specific points that you raised in your 11 September email (requesting an internal review). In doing so it is important to correct or clarify a few points.
17. The OGA is not claiming any commercial interest in the site itself.
18. The OGA's commitment to transparency and its effective system of regulation do not override the requirements of FOIA and EIR where valid exemptions/exceptions are engaged.
19. Although Cuadrilla itself does not have a shares listing, its parent companies A J Lucas group and Riverside Holdings both do have a shares listing, which would be likely to be affected by commercial damage to Cuadrilla. We should have set this out previously.



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20. While no operators are currently drilling for shale in the UK, Cuadrilla and its parent companies have other businesses (for example Elswick and licensed areas in Poland). Therefore, the consideration of Cuadrilla's commercial interests and the potential impact of confirming or denying/disclosure is not simply a case of looking at its UK assets and UK competitors.
21. The "exceptional circumstances" behind the only previous publication of a consent was due to the timing and sensitivity of the material disclosed rather than external factors.
22. In regard to current public communication arrangements by Cuadrilla, the existence, or not, of a press office and what information is currently pro-actively published by Cuadrilla is a matter for them. The views of potentially affected parties are routinely sought in regard to FOI requests received at the OGA and, should Cuadrilla consider information to be highly market sensitive (including details of whether it is actually held or not), then they would not be likely to pro-actively publish this information themselves if they did not want the OGA to do so.
23. We note the points raised about the moratorium on fracking, the seismic events of 2019, the fact that this is the first high volume hydraulic fracture since 2011 or that it is the first horizontal well.
24. Having considered the ICO guidance on the public interest (https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf), I am satisfied that these points do not indicate a more widespread public interest in the PNR site, beyond those people whom have already raised their objections publicly. Furthermore, activity at the site has been at a minimal level since the moratorium and interest by the wider media, enquiries from the local residents and demonstrators at the site have all declined since then. Meaning that the effect of Cuadrilla either applying, or not applying for, an extension of time to their consent would have no immediate impact on public life.
25. Furthermore, having further considered the weight of evidence behind the OGA's decision to neither confirm nor deny, in addition to seeking the views of



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Cuadrilla, I have also considered the historical precedent of the publication of licensees' consents.

26. There are regularly around 100 consents for onshore licences and 1000 for offshore licences issued annually (and there have so far been 80 onshore consents already this calendar year) and the publication of Cuadrilla's consent last year was the only time that one had ever been published. Therefore, there is clearly strong precedent for consents *not* to be published.
27. In light of the information before me, I consider that the Response was reasonable and appropriate.

D. Conclusion

28. I consider that the OGA's handling of the Original Request to have been reasonable. I also conclude that the exemption/exception was engaged, that reliance on the exemption/exception was reasonable and that it was and remains reasonable for the OGA to have neither confirmed nor denied whether the information was held.
29. However, while the Response last August, to neither confirm nor deny, was reasonable, we can confirm based on consent from Cuadrilla and different commercial considerations, that there is no current consent in place for an EWT at the PNR site and no application is under consideration.
30. 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,

Hedvig Ljungerud

Director, Strategy Directorate



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Authority

Annex 1 (OGA's response to the original Request – see attachment)



Annex 2 (Original Request)

-----Original Message-----

From: Ruth Hayhurst <request-682092-108f73bb@whatdotheyknow.com>

Sent: 05 August 2020 14:22

To: OGA FOI requests <foirequests@ogauthority.co.uk>

Subject: Freedom of Information request - Application by Cuadrilla for an extension to consent for a extended well test

Dear Oil and Gas Authority,

On 5 August 2019, the Oil & Gas Authority granted a one-year consent to Cuadrilla Bowland Ltd for an extended well test on its PNR2 well at Preston New Road in Lancashire. See confirmation in this FOI response on 14 October 2019

https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fflow_testing_at_preston_new_road%23incoming-1611435&data=02%7C01%7Cfoirequests%40ogauthority.co.uk%7Cdf3c222fcb2744c76edd08d839427b53%7Ce681c59d868e488780face36f1f21b0f%7C0%7C1%7C637322305034754166&sdta=UHj2DS6Fvti1VEafBTx0bfG6iyMTFO1E3hJMQ5loMgM%3D&reserved=0

Please confirm whether Cuadrilla Bowland, or any other Cuadrilla company, has sought to extend this consent and, if so, for how long.

Yours faithfully,

Ruth Hayhurst

Please use this email address for all replies to this request:
request-682092-108f73bb@whatdotheyknow.com



Annex 3 (Internal Review Request)

-----Original Message-----

From: Ruth Hayhurst <request-682092-108f73bb@whatdotheyknow.com>

Sent: 11 September 2020 12:16

To: OGA FOI requests <foirequests@ogauthority.co.uk>

Subject: Internal review of Freedom of Information request - Application by Cuadrilla for an extension to consent for a extended well test

Dear Oil and Gas Authority,

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 'Application by Cuadrilla for an extension to consent for a extended well test'.

I believe an internal review should be conducted for the reasons below. I have responded to the numbered points made by the OGA's FOI officer in the refusal.

1. The OGA says it is "committed to being open and transparent". Confirmation of whether Cuadrilla has sought to extend the consent would confirm that the OGA is meeting its commitment.

2. I argue that there are exceptional circumstances which mean there should have been prior agreement to publish information about the application. This is because of the extensive and ongoing public interest in the Preston New Road site:

- The site saw the largest number of objections to an onshore oil and gas planning application, including from all levels of local government.
- The site saw the first UK high volume hydraulic fractures since 2011.



- The site has the UK's first horizontal shale gas wells.
- In August 2019, fracking the PNR2 well caused the most powerful UK onshore fracking-induced seismic event.
- Fracking-induced seismicity at the PNR site prompted the UK government to impose a moratorium on fracking in England.
- Cuadrilla no longer employs a press office and there is limited distribution of information about the site to the public

4. Confirming or denying this information would have no impact on the OGA's commercial interests because the OGA has no commercial interests in the PNR2 well or the extended well test.

5. Cuadrilla is privately-owned. It is not stock market listed and does not have a share price so this could not be affected by disclosure of the requested information. Cuadrilla has no competitors in the area around and including Preston New Road. The company has an exclusive right, subject to permissions, to explore for hydrocarbons.

5/6. No other operators are currently drilling, testing or fracking for shale gas in the UK so I cannot see how Cuadrilla has competitors in this field. If it did, I cannot see how disclosure of the requested information would help them.

8. The OGA's objective of having an effective system of regulation is best served by transparency and providing evidence to the public that it is working properly.

9. For the reasons given above, I cannot see how disclosure of whether Cuadrilla has applied to extend the time limit for an EWT would "impact negatively Cuadrilla's commercial interests". The OGA has provided no evidence that this disclosure would discourage other licensees/operators from making legitimate and lawful applications in future or to delay them.



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A full history of my FOI request and all correspondence is available on the Internet at this address:
https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fapplication_by_cuadrilla_for_an&data=02%7C01%7Cfoirequests%40ogauthority.co.uk%7C5429dd0760e047c4cbc808d8564404af%7Ce681c59d868e488780face36f1f21b0f%7C0%7C0%7C637354197423673594&sdata=5%2FPm%2FpxqE1denhcjaVgUTj34cYTBuqI%2Fs2Ovlqfpzo%3D&reserved=0

Yours faithfully,

Ruth Hayhurst

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