

S Betteridge

Sent by email:
**request-703115-
0c7c4515@whatdotheyknow.com**

Our ref: CL191696

Your ref:

Date: 14 December 2020

Dear Sir/Madam

Request for information about the environmental permit application for the proposed Kingmoor Energy from Waste Facility

Thank you for your request received on 2 November 2020 for information about the application for an environmental permit for the proposed Kingmoor Energy from Waste Facility.

I have attached the information you have requested to this email. Please click **here** to refer to the Open Government Licence which explains the permitted use of this information.

Any information submitted as part of the permit application is already publically available at the following link so has not been sent to you separately - **<https://consult.environment-agency.gov.uk/psc/ca6-4se-fortum-carlisle-limited/>**

As part of the permit application, we hold modelling data for air quality, human health risk assessment and noise. This can only be opened with specialist software and so has not been included in this response. It is available on request.

We have redacted limited information in line with the requirements of the Data Protection Act 2018.

We have also redacted some limited information because it is both commercially confidential and volunteered information.

As a public body we are required under the Environmental Information Regulations (EIR) to give reasons for why we have redacted some information. We also need to show that we have considered the public interest balance between redaction and disclosure. You can find the details in the appendix at the end of this letter.

If you are not satisfied you can contact us within 2 calendar months to ask for our decision to be reviewed. We shall review our response to your request and give you our decision in writing within 40 working days.

If you are still not satisfied following this, you can raise a concern with the Information Commissioner, who is the statutory regulator for Freedom of Information and the Environmental Information Regulations. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 0303 123 1113
Website: <http://ico.org.uk>

Yours sincerely

A handwritten signature in dark ink that reads "L. Travers". The signature is written in a cursive, slightly slanted style.

Laura Travers
Customer Engagement Specialist
Mob: 07917 580 679

Appendix

Relevant exceptions under the EIR

The exceptions that apply to the withheld information are:

Personal data

- The Environment Agency is not able to disclose names and contact details of individuals who are not our employees, as this is personal data under the Data Protection Act 2018 (DPA 2018), and to disclose it would breach the First Data Protection Principle of the DPA 2018.

The information requested is therefore exempt due to Regulation 13(1) of the EIR which explains that:

“To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied...”

The ‘first condition’ referred to above is further explained in Regulation 13(2A):

“The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles...”

We consider that when individuals provide their personal information to us, they do so in the expectation that it will only be used for the purposes for which it is provided. We do not consider that they would reasonably expect us to make their personal information available to the world at large in response to a request under freedom of information legislation.

This exception is not subject to a separate public interest test under the EIR.

Commercial confidentiality

- EIR Regulation 12(5)(e) applies because disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. The adverse effect would be to release information that may be of use to the company’s competitors, the economic interest that will be harmed is that the company may be placed at a disadvantage to its competitors and the confidentiality is provided by the common law.

Volunteered information

- EIR Regulation 12(5)(f) applies because disclosure would adversely affect the interests of the person who provided the information where that person was not under, and could not have been put under, any legal obligation to supply it to the Environment Agency or any other public authority; they did not supply it in circumstances such that that or any other public authority is entitled apart from these regulations to disclose it; and they have not consented to its disclosure. The adverse

effect would be caused by putting the company at a commercial disadvantage with its competitors.

The Public Interest Test

We have weighed the public interest factors in favour of maintaining the exceptions and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test we have considered:

1. Factors in favour of releasing the information:

General presumption of openness

The Environment Agency would only withhold information if it is sure that disclosure would cause substantial harm. Here the harm would be to put the company at a commercial disadvantage with its competitors.

General need to promote accountability and transparency

There is an inherent general public interest in disclosure so public authorities are transparent and accountable. It is important that a public authority is accountable in spending public money and that the public are able to assess how it is taking decisions that affect them and that decision-making and the spending of public money is done in an open manner.

Contribution to public debate of issues.

There is clearly a high level of public interest over the application for the proposed Kingmoor Energy from Waste Site. To meet this interest we have consulted widely on the application and placed a significant amount of information in the public domain to allow the public to engage in this matter.

2. Factors in favour of withholding the information:

‘Strength’ (and number) of grounds in the legislation

The personal data we have redacted is exempt information under Regulation 13 of the Environmental Information Regulations.

The remainder of the information we have redacted is exempt from disclosure as it is either commercially confidential (under Regulation 12 (5) (e)), or it was volunteered to us in confidence under Regulation 12(5)(f) of the Environmental Information Regulations,

In relation to the commercially confidential information, the adverse effect of disclosure would be that the commercial interests of the body to which the information relates would be prejudiced by making the information available to others operating in a commercial market. There is a public interest in ensuring that companies can operate without the release of

information to the general public that harms their competitiveness, and in protecting the commercial interests of the private sector, which plays an important role in the general health of the country's economy.

In the case of information that was volunteered to us under an expectation of confidence, we consider that disclosure would harm our working relationships with operators and customers. Maintaining these relationships is necessary for efficient and effective regulation and permitting. This exception can only apply in cases where we could not have placed the operator under a legal obligation to provide information to us, so any information that they choose to provide to us is done so in with the expectation that it will be treated in confidence. We also consider that due to the nature of the information that was volunteered to us, its disclosure could have an adverse effect on the commercial interests of the information provider.

The information that has been redacted does not affect the public's ability to fully take part in the consultation process for the application. It is not information that we would take into account as part of our decision on whether or not to grant the environmental permit.

Conclusion

As indicated, upon assessing the factors in the public interest test, we have assessed that in relation to the commercially confidential and volunteered information, we find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information. We have reached this decision after applying the statutory presumption in favour of disclosure contained in the EIR.