

Jane Lucy

By email: request-341642-1313a133@whatdotheyknow.com



Making a positive difference

Your Ref: : **for energy consumers**  
Our Ref: RFI 1964-2016

Direct Dial: 0207 901 7011

Email: [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk)

Date: 19 August 2016

Dear Ms Lucy,

### Freedom of Information Act 2000 ("the Act")

We write with reference to your email of 24 June 2016 and our letter of 22 July 2016. In that email you requested the following information:

*"I note that your response to the DECC consultation made a number of objections that were not followed in the decision:*

[https://www.ofgem.gov.uk/sites/default/files/docs/2012/05/ofgems\\_response\\_to\\_deccs\\_consultation\\_on\\_data\\_access\\_and\\_privacy.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2012/05/ofgems_response_to_deccs_consultation_on_data_access_and_privacy.pdf)

*Given the Competition and Markets Authority's concern about your ability to perform your role and decision to ensure you have "a simpler and clearer focus on the interests of customers, an additional role to scrutinise and comment on government policies, greater access to relevant financial information from industry and greater powers to drive through changes to industry codes when these are needed to meet broader policy objectives and are in the interests of customers and competition", **my question is whether you have had any correspondence with DECC since your response linked above about the DAPF and the outstanding concerns that you have?** If you can kindly share all documentation in relation to your response to the DAPF and since you made that response."*

On 22 July 2016 we wrote to you clarifying that we have treated the points highlighted bold above as a valid request for information under section 8 of the Act and set out our response to the request, in compliance with the regime prescribed by the Act

In that letter we confirmed that Ofgem (the "Authority") holds information within the scope of your request, and after careful consideration we responded that we did not consider it appropriate to release the information requested. Our reason is that we regard the information falling within the scope of your request that we hold as exempt from disclosure, principally the qualified exemptions under section 35 (formulation of government policy, etc.).

The above exemption requires the application of the public interest test in order to determine whether any of the relevant information should be disclosed. Having applied this test we consider that it weighs in favour of withholding the information falling within your request.

## Reasons for decision

### *Formulation of government policy, etc. – section 35(1)(a)*

As we set out in our letter of 22 July 2016, the terms of this section include a provision that information held by a government department is exempt if it relates to the formulation or development of government policy.

The information requested relates to the data access and privacy framework. Although this framework was put into place back in 2012, at that time DECC (now BEIS) committed to reviewing the framework within three years. There have been some delays to this review mostly flowing from difficulties associated with DCC 'go-live', however, BEIS expect to carry out this review by the end of 2018. We consider that releasing the information requested would compromise the ongoing policy work that will feed into BEIS's review of the framework.

### Public interest test

The formulation of government policy being a qualified exemption, we have applied the public interest test and Ofgem takes the view that the following factors weigh in favour of disclosure:

- The data security and communications framework is a part of the smart metering rollout which is a major project. There is a wider public interest in providing transparency and assessment of how policy design decisions are made in connections with projects of this scale.
- There is a general public interest in openness and in providing the public with a greater understanding of how government decided upon the data security and communications framework, and the role or advice Ofgem provided to BEIS at the time.

Ofgem considers that the following factors weigh in favour of withholding the information:

- Disclosure will impact the ability of Ofgem to have free and frank debate with BEIS on current related data access and privacy issues and aspects of the framework that are about to be reviewed or are in the process of being developed.
- Disclosure of the information would impact on the way in which advice on the design and changes to the regulatory framework are considered and discussed with BEIS as it would create a 'chilling effect' that will likely affect the formulation and sharing of internal views and considerations given a concern that they would be subsequently disclosed. Overall we consider that this would likely lead to poorer quality decision making, especially in the area relating to the data access and privacy framework, which remains a live issue of policy formulation. Given the impact that such a regime has on consumers we consider it to be of greater importance to preserve the ability of Ofgem and BEIS to have free and frank debate of the issues going forward.

On weighing up the above, Ofgem considers that those factors in favour of withholding the information outweigh the factors warranting its disclosure.

## Internal review

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter. If you require an internal review you should contact me via the [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk) email box or write to me at the following address:

If you are not content with the outcome of the internal review, you have the right to apply directly to 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

If you have any queries about this letter, please contact me. Please quote the reference number above in any future communications.

Yours sincerely,

Paul Kitcher  
Head of Information Management  
Ofgem