

Mr Mike Post

Sent via e-mail

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Our ref: WT/ 8892

Date: 4 April 2013

Dear Mr Post

**RE: Request for information under the Freedom of Information Act 2000 (FOIA) /
Environmental Information Regulations 2004 (EIR)**

We refer to your request for information of 6 March 2013.

Requests for information that is recorded are generally governed by the Freedom of Information Act 2000 (FOIA). The information you have requested is environmental and it is therefore exempted from the provisions of FOIA by FOIA s.39(1). We have therefore considered your request under the provisions of the Environmental Information Regulations 2004 (EIR). EIR regulation 12 allows a public authority to refuse to disclose environmental information if an exception to disclosure applies under paragraphs (4) or (5) and in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. A public authority shall apply a presumption in favour of disclosure.

Information enclosed and notice

We now attach the following:

- Appendix 1 : (Part 1) Instructions for Developers
- Appendix D : Initial Site Screening Comments
- Appendix G: Developer Gateway Process
- Expression of Interest – Phase II
- Answers to your 5 specific questions

Please see the standard notice for details of permitted use.

Relevant exceptions

It is clear that the hydropower developers were providing information to us in a situation where they were seeking assistance and providing sensitive information to us. The information was of a confidential nature and was provided in circumstances where there was a legitimate expectation on the part of developer that discussions and information submitted was confidential. Therefore a common law duty of confidence arises between the parties that the Environment Agency would breach, if the information is disclosed. There is a public interest in ensuring that public authorities do not breach their legal obligations even where we, as a public body, is subject to the overriding effect of the EIR and the need always to consider requests for information in accordance with that legislation. In considering the application of EIR 12(5)(f) this confidentiality is relevant in so far as were it not for the EIR, we would not be entitled to disclose this information, which was volunteered; we could not require its production; and the developers have not consented to release. We also refer to the adverse effect on the developers of misleading and inaccurate information being released leading to inappropriate criticism and wasted time in dealing with enquires and requests about information that has been set aside as being incomplete and inaccurate.

Public Interest Test

The public interest in allowing regulation to be effective, and engaging with customers to assist them in this fashion at their request, is central to our role of ensuring the best outcome for the environment. It is contrary to the public interest for common law confidentiality to be overridden so that those whom we regulate are no longer willing to enter into dialogue and to provide information to us. Constructive and open dialogue between the regulator and those regulated would be hampered. It is clearly in the public interest for a public authority to have a degree of private space in which to discuss issues and reach agreements with third parties and for third parties to have access to public authorities to discuss areas of particular and legitimate concern to them without facing immediate public scrutiny. This is particularly true in an area such as when dealing with regulation of hydropower installations, where there is such a high level of public debate and decisions are highly contentious and complex. It is not an efficient way of working for the EA to be shown documentation and to be asked to consider and comment on it and then hand it back. It is far more efficient and effective for the EA to be able to receive the documents and ensure that those who can usefully give technical and other input have the time to do that in a measured and unhurried way so as to ensure that regulation is taking into consideration scientific evidence, testing etc. as relevant to the particular issue. It is in the public interest that we are able to have an open and frank exchange of views and to receive information from industry in order to better develop policies and take decisions, taking into consideration the concerns of representatives of industry. To be required to release this information would prevent testing the robustness of emerging views through free and frank exchange of ideas. This could impact adversely on our ability to carry out our primary function of protecting the environment and human health.

Rights of appeal

If you are not satisfied with our response to your request for information, you can contact us to ask for our decision to be reviewed. If you are still not satisfied following this, you can make an appeal to the Information Commissioner, who is the statutory regulator for Freedom of Information. The address is: Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF .

Tel: 01625 545700.

Fax: 01625 524 510.

E-mail: mail@ico.gsi.gov.uk.

Website: <http://www.informationcommissioner.gov.uk>

Yours sincerely



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Attachments