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Your ref:

19th September 2012

Our ref:

Dear Mr Cross,

Further to correspondence with the Information Commissioner's Office, Milford Haven Port Authority has now carried out an internal review of its handling of your information request.

Background

The initial request was received on 8 April 2012. The scope of the request was clarified on 16 April 2012 when you confirmed that the information you wished to receive was environmental information contained in minutes of meetings of MHPA's governing body, held after 1 January 2011.

The Authority's response was due on the 15 May 2012. However, the Authority notified you on 4 May 2012 that the information you had requested formed part of the Authority's internal communications which was potentially exempt from disclosure by virtue of Regulation 12(4)(e) and that the Authority intended to extend time to consider whether the public interest favoured the application of the exception. Regulation 7 permits authorities to extend time by up to a further 20 working days (in this case up to 7 June 2012) in complex cases.

Following correspondence with you regarding the charging of a fee, redacted minutes of 8 Authority Board Minutes were supplied to you by email on 30 May 2012 together with an explanation of the basis upon which various redactions had been carried out.

Our final response of 30 May 2012 indicated that much of the information contained in the Authority's Board Minutes was excluded from the scope of your request because it was not environmental information as defined in the EIR 2004. This information was redacted in white from the copies of minutes supplied to you.

The response further explained that certain environmental information contained in the minutes was considered exempt from disclosure by virtue of Regulation 12(4)(e) on the basis that it constituted internal communications disclosure of which was not favoured by the public interest test. This information was redacted in black from the copies of minutes supplied to you.

Internal review

In conducting this internal review, we have reviewed both the extent to which information contained in the Board Minutes either does, or does not, amount to environmental information, and the extent to which the exception at Regulation 12(4)(e) has been properly applied.



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In a few cases we have concluded that information, which we did not initially consider to be environmental information, does in fact constitute environmental information which should now either be disclosed or which is exempt by virtue of Regulation 12(4)(e).

We have also reviewed the extent to which Regulation 12(4)(e) was properly applied to the information redacted in black from the documents supplied to you. In view of the fact that minutes of internal Authority Board Meetings are clearly internal communications (as has been accepted by the ICO in reported cases involving Department of Energy and Climate Control (case ref FS50158501 (2009)) and Defra (case ref FER0272686 (2009)), this part of the review has required consideration only of the extent to which the public interest applying the exemption outweighs the public interest in disclosure.

Our review findings are set out below in relation to each set of minutes falling within the scope of your request

Minutes of Authority Board Meeting of 27 January 2012

5. Safety, Security and Environmental Report

We have reviewed the extent to which information contained in this section of the minutes constitutes environmental information. In doing so, we have concluded, on balance, that information regarding safe practices for the berthing of LNG vessels is probably environmental information and that this information should be disclosed.

Information regarding an incident involving a small release of gas has already been disclosed to you. In conducting this review, we have also concluded that information regarding action taken following this incident is also environmental information that should be disclosed.

We have also concluded that information regarding measures implemented to prevent line failures constitutes environmental information because of the potential environmental impact of line failure and that this information should be disclosed

8. Chief Executive's Report

Having reviewed the first paragraph of section 8 we have concluded that, on balance, this information constitutes environmental information in that it relates to gas volumes at the Port. However, as the information in question relates not to environmental impact but to MHPA's internal financial planning, we have concluded that the balance of the public interest favours the application of the exception at Regulation 12(4)(e).

We have reviewed the redacted paragraphs relating to planning matters and continue to take the view that this information is exempt under Regulation 12(4)(e). This information relates to development plans which MHPA was exploring during 2011 but which the Authority is no longer considering. In view of the fact that these development plans will not now be pursued, we consider the public interest in accessing records of internal discussions of these plans is minimal and is certainly outweighed by the greater public interest in ensuring that the Board is able to discuss commercially sensitive and strategic objectives on a confidential basis.



9. Finance and HR

Information redacted from section 9 of the minutes relates to the project referred to above in relation to planning at section 8 of the minutes. The public interest favours the application of the exception at Regulation 12(4)(e) for the reasons given above.

12. Deep Sea Report

2 paragraphs were redacted from this section of the minutes.

The first of these paragraphs relates to the project referred to above in relation to planning at section 8 of the minutes. The public interest favours the application of the exception at Regulation 12(4)(e) for the reasons given above.

The second of these paragraphs relates to a commercial opportunity which is currently being explored by MHPA. Disclosure of this information would be likely to prejudice MHPA vis a vis its competitors by alerting them to the opportunity that MHPA has identified. MHPA recognises that there is some public interest in accessing information regarding MHPA's commercial plans insofar as they relate to the environment but does not consider the public interest in disclosure in this case to be significant given that, at present, the Port is simply exploring the viability of the proposed initiative and there are as yet no definite plans in place. By contrast MHPA considers there to be a significant public interest in ensuring that it is able to consider internally strategic proposals that are commercially sensitive on a confidential basis.

13. Short Sea Report

Our initial response indicated that the first paragraph of section 13 of the minutes did not constitute environmental information. On review, we have concluded that this paragraph does in fact include environmental information in that it refers to an initiative that relates to the environment. The information relates also to MHPA's commercial strategy. Having considered the public interest test we have concluded that disclosure would do very little to inform the public about environmental matters and that there is relatively little public interest in disclosure. On the other hand MHPA considers it is important that it should be able to discuss its commercial strategy internally on a confidential basis. There is otherwise a risk that the Authority will be deterred from discussing commercially sensitive matters at its Board meetings, or will be deterred from properly recording its deliberations to the detriment of good governance. The Authority therefore considers that the public interest favours applying the exception at Regulation 12(4)(e) in this case

Minutes of Authority Board Meeting of 25 November 2011

102. Safety

We have reviewed the final paragraph of section 102 relating to mooring line issues and have concluded this information to be environmental information, disclosure of which is favoured by the public interest test



103. September and October 2011 results

Having reviewed section 103 we have identified 2 paragraphs which, on reflection, we consider to constitute environmental information. The first of these is commercially sensitive information, disclosure of which would be unlikely to inform the public in any significant manner about environmental matters. The public interest test is therefore considered to favour the application Regulation 12(4)(e).

The second of the two paragraphs reports on the progress of a commercial project which MHPA is no longer pursuing. Because this project is no longer being pursued by MHPA we do not consider there to be any significant public interest in the disclosure of this information. We do, however, consider it important that the Board should be able to discuss its commercial projects on a confidential basis. There is otherwise a risk that the Authority will be deterred from discussing commercially sensitive matters at its Board meetings, or will be deterred from properly recording its deliberations to the detriment of good governance. The Authority therefore considers that the public interest favours applying the exception at Regulation 12(4)(e) in this case.

105. Chief Executive's Report

In our original response, the percentage figure for the projected internal rate of return to be achieved as a result of solar panel installation was redacted as it was commercially sensitive and the public interest was considered to favour the application of Reg 12(4)(e). Having reviewed the application of the exception to this information we are satisfied that public interest has been properly applied because, for the reasons set out above there is a public interest in ensuring that the Authority is free to discuss commercially sensitive matters at its Board meetings.

CCTV

Having reviewed section 105, MPHA is satisfied that information relating to civil works being carried out to support security at Gate 4 is environmental information and that this information ought now to be disclosed.

Dredging

In our original response, dredging costs were redacted as this information is commercially sensitive. Disclosure would be likely to prejudice the Authority's ability to negotiate on dredging costs in future. Having reviewed the application of the exception to this information we are satisfied that public interest has been properly applied to this information because, for the reasons set out above there is a public interest in ensuring that the Authority is free to discuss financial detail matters at its Board meetings.

107. Marketing Report

Having reviewed section 107 MHPA is satisfied that information relating to the Blackbridge Project is environmental information. The Blackbridge Project continues to be under active consideration. Disclosure of detailed information relating to this project would offer unfair assistance to MHPA's competitors. Although we do recognise that there is some public interest in accessing information regarding this project, we have concluded that on balance the public interest favours redaction because of the public interest in ensuring that the



Authority should be free to discuss commercial projects at its Board Meetings on a confidential basis for the reasons given above.

108. Engineering Report

Having reviewed section 108, MPHA is satisfied that information relating to the MHPA Jetty, the PDFT Roadway Cross Head Structure, Mid Channel Rock, and the Milford Dock Lock is environmental information and that this information ought now to be disclosed.

110. Pembrokeshire Marine Group Report

Having reviewed section 110, MPHA is satisfied that information relating to the improvement of marina facilities is environmental information and that this information ought now to be disclosed.

Minutes of Authority Board Meeting of 30 September 2011

83. Minutes of Previous Meeting

Having reviewed section 83, MPHA is satisfied that information relating to Milford Dock Lock is environmental information and that this information ought now to be disclosed.

85. Safety

Having reviewed section 85, MPHA is satisfied that information relating to the management of mooring line failures is environmental information and that this information ought now to be disclosed.

87. July and August 2011 Results

Having reviewed section 87, MPHA has concluded that the second paragraph of this section is probably environmental information. However this information relates to the Authority's strategic commercial planning and is commercially sensitive. The information is speculative and its disclosure would be unlikely to inform the public in a meaningful way about environmental matters. Therefore MPHA has concluded that the public interest test favours the application of the exception at Reg 12(4)(e).

88. Chief Executive's Report

Pembroke Port

In our original response commercially sensitive information relating to Pembroke Port was redacted. We are satisfied that this information is properly exempt under Reg 12(4)(e); its disclosure would be unlikely to inform the public in a meaningful way about environmental matters and MPHA has concluded that the public interest test favours the application of the exception because of the public interest in ensuring that the Authority should be free, for the reasons give above, to discuss commercial projects at its Board Meetings on a confidential basis.



Expenditure Proposals

Having reviewed this information we have concluded that certain information relating to the acquisition of property is environmental information and that this information ought now to be disclosed.

In our original response environmental information contained in this part of the minutes was redacted because of its commercial sensitivity. Having reviewed this information we are satisfied that this information is properly exempt under Reg 12(4)(e); its disclosure would be unlikely to inform the public in a meaningful way about environmental matters and MHPA has concluded that the public interest test favours the application of the exception because of the public interest in ensuring that the Authority should be free, for the reasons give above, to discuss commercial projects at its Board Meetings on a confidential basis.

90. Marketing Report

In our original response, the first paragraph of this part of the Minutes was redacted as it relates to MHPA's commercial strategy. Having reviewed this information we are satisfied that the exception at Reg 12(4)(e) has been properly applied. While we recognise there is a public interest in accessing information regarding MHPA's strategic plans insofar as these may affect the environment, in this case we are satisfied that the public interest favours the application of the exception because of the public interest in ensuring that the Authority should be free, for the reasons give above, to discuss commercially strategic matters projects at its Board Meetings on a confidential basis.

RWE Atlantic Array Wind Farms

We have reviewed the information that was redacted from this section of the minutes in our initial response. We have concluded that the public interest favours disclosure of the first sentence of this section. We are satisfied however that that the exception at Reg 12(4)(e) has been properly applied to the remaining information in his section because this information is commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information.

91. Engineering Report

In our original response the value of the order placed with UK Dredging was redacted because its disclosure would be likely to prejudice the commercial interests of UK Dredging by offering unfair commercial advantage to the company's commercial competitors. We consider any public interest in the disclosure of this contract value to be outweighed by the public interest in protecting the legitimate commercial interests of UK Dredging and are therefore satisfied that the exception at Reg 12(4)(e) applies.

Mid Channel Rock

Having reviewed this information we have concluded that certain information relating to Mid Channel Rock is environmental information and that this information ought now to be disclosed.



93. Pembrokeeshire Marine Group Report

Having reviewed this section of the Minutes we have concluded that the first sentence is environmental information and that this information ought now to be disclosed

94. Solar Panel Report

In our original response, certain information relating to the installation of solar panels was redacted because of its commercial sensitivity. We are satisfied however that the exception at Reg 12(4)(e) has been properly applied to the remaining information in this section because this information is commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information.

Minutes of Authority Board Meeting of 22 July 2011

68. Safety

Having reviewed section 68, MHPA is satisfied that information relating to decking in the Marina is environmental information and that this information ought now to be disclosed.

70. Chief Executive's Report

Pembrokeeshire County Council Meeting

In our original response, environmental information was redacted on the grounds that it was commercially sensitive. We are satisfied however that the exception at Reg 12(4)(e) has been properly applied to the remaining information in this section because this information is commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information.

Having reviewed the final section of this part of the minutes we have concluded that this information is environmental information and that this information ought now to be disclosed

71. Marine Report

LNG

Having reviewed section 71, MHPA is satisfied that information relating to a mooring line failure is environmental information and that this information ought now to be disclosed.

72. Marketing Report

In our original response, environmental information was redacted from this section of the minutes because of its commercial sensitivity. Having reviewed this information we are



satisfied however that that the exception at Reg 12(4)(e) has been properly applied because this information is commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information.

77. London Road Site Acquisition Report

In our original response, information regarding this acquisition was redacted because of its commercial sensitivity. As the land acquisition has now been completed MHPA now has no objection to disclosure of this information.

78.

In our original response environmental information relating to a land acquisition project was redacted because of its commercial sensitivity. We have reviewed our application of the public interest test in relation to this information and have concluded that the public interest in the disclosure of some of this information outweighs the public interest in applying the exemption and that it should now be disclosed. We have also reviewed the information set out in the three resolutions recorded in this section of the minutes and have concluded that the information at the first two of these resolutions is not environmental information. This has been recorded on the revised redacted document attached. Having reviewed the remaining environmental information in this section, we are satisfied however that that the exception at Reg 12(4)(e) has been properly applied to the remaining information in this section of the minutes because it continues to be commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information

Minutes of Authority Board Meeting of 22 June 2011

60. Matters Arising

In our original response, information was withheld from this section of the minutes because of its commercial sensitivity. This information is no longer considered to be commercially sensitive and should now be disclosed and no environmental information has been redacted from this set of minutes.

Minutes of Authority Board Meeting of 27 May 2011

Information was redacted from the introductory section to these minutes because it related to commercially sensitive development plans. These plans are no longer under consideration and the information may be disclosed.

41. Minutes of Previous Meeting

Information relating to MHPA's expenditure in relation to yacht lock gates was redacted because of its commercial sensitivity. This information continues to be commercially sensitive because the procurement process in respect of these lock gates is ongoing. We are satisfied that that the exception at Reg 12(4)(e) has been properly applied to this



information because it continues to be commercially sensitive while its disclosure would be unlikely to make any significant contribution to public understanding of environmental matters. The public interest is therefore considered to favour the application of the exception to this information

46. Chief Executive's Report

4 Gas

We have reviewed the information contained in the minutes relating to 4Gas and have concluded that this information is environmental information which may be disclosed.

49. Mustang Marine Ltd

We have reviewed the information contained in the minutes relating to Mustang Marine Ltd and have concluded that one sentence in this section of the minutes is environmental information which may be disclosed. We have also concluded that the Board's Resolution in relation to this information is also environmental information that may be disclosed.

Minutes of Authority Board Meeting of 25 March 2011

23. Minutes of Previous Meeting

We have reviewed the information contained in the minutes relating to the acquisition of land in this section and found it to be environmental information which may be disclosed subject to the redaction of commercially sensitive information. We are satisfied that the public interest favours the application of the exception at Reg 12(4)(e) because disclosure would not be likely to make any significant contribution to public understanding of environmental matters. .

24. Matters Arising

We have reviewed the information contained in the minutes relating to 4Gas and found it to be environmental information which may be disclosed subject to the redaction of commercially sensitive information. We are satisfied that the public interest favours the application of the exception at Reg 12(4)(e) because disclosure would not be likely to make any significant contribution to public understanding of environmental matters.

Solar Panel Project

In our original response, commercially sensitive information was redacted from this section of the minutes. We are satisfied that the public interest favours the application of the exception at Reg 12(4)(e) because disclosure would not be likely to make any significant contribution to public understanding of environmental matters.

26. Safety

We have reviewed the information contained in this section of the minutes relating to the management of mooring line failures and have found it to be environmental information which may be disclosed.



In our original response, commercially sensitive information relating to road access to Unit Engineering was redacted. Having reviewed this information we are now satisfied that the public interest favours disclosure of this information.

28. Chief Executive's Report

We have reviewed the information contained in this section of the minutes relating to Safe Haven and have found it to be environmental information which may be disclosed.

29. Marine Report

We have reviewed the information contained in this section of the minutes relating to the management of mooring line failures and have found it to be environmental information which may be disclosed

30. Marketing Report

In our original response, commercially sensitive information in this section of the report was redacted. We have reviewed this information and are satisfied that it continues to be commercially sensitive in that it relates to strategic initiatives that are still under active consideration. Disclosure would be likely to assist MHPA's competitors to the detriment of MHPA's commercial interests. Furthermore, certain of the information concerned is the subject of a non disclosure agreement between MHPA and a third party. Although we recognise there to be a public interest in the disclosure of information held by MHPA in relation to environmental matters, we are satisfied that the public interest in this case favours the application of the exception at Reg 12(4)(e) because of the public interest in ensuring that the Authority should be free, for the reasons give above, to discuss commercially strategic matters projects at its Board Meetings on a confidential basis.

31. Engineering Report

In our original response this information was redacted because it was considered to be commercially sensitive. On reviewing this information we have now concluded that the public interest favours disclosure.

32. Lock Gate Investment

In our original response the approved expenditure for the installation of mitre gates was redacted because it was considered to be commercially sensitive and exempt under Reg 12(4)(e). Having reviewed this information, we continue to consider that it is exempt from disclosure as the procurement process for this project has not yet concluded. Disclosure of MHPA's budget for this work would be very likely to prejudice the effective procurement of these works. In view of this commercial sensitivity, we are satisfied that the public interest in this case favours the application of the exception at Reg 12(4)(e) because of the public interest in ensuring that the Authority should be free, for the reasons give above, to discuss commercially sensitive matters projects at its Board Meetings on a confidential basis.



Minutes of Authority Board Meeting of 28 January 2011

5. Safety

We have reviewed the information contained in this section of the minutes relating to the management of mooring line failures and have found it to be environmental information which may be disclosed

8. Chief Executive's Report

We have reviewed the information contained in this section of the minutes relating to a lease regarding the Milford Haven Coastguard Unit and have found it to be environmental information which may be disclosed

9. Marine Report

We have reviewed the information contained in this section of the minutes relating to the management of mooring line failures and have found it to be environmental information which may be disclosed

10. Marketing Report

In our original response commercially sensitive information was redacted from this section of the minutes on the basis that Reg 12(4)(e) applied. Having reviewed this information, we have concluded that the public interest favours the disclosure of some, but not all of the redacted information. We continue to consider that certain information in this section of the minutes is commercially sensitive in that it relates to current commercial strategic plans of MHPA. In view of this commercial sensitivity, we are satisfied that the public interest in this case favours the application of the exception at Reg 12(4)(e) because of the public interest in ensuring that the Authority should be free, for the reasons given above, to discuss commercially sensitive matters at its Board Meetings on a confidential basis.

15. Pembrokeshire Marine Group Report

In our original response commercially sensitive information was redacted from this section of the minutes on the basis that Reg 12(4)(e) applied. Having reviewed this information, we have concluded that the public interest favours the disclosure of this information

17. Land Acquisition Pembroke Port

In our original response the anticipated acquisition costs for land was redacted because it was considered to be commercially sensitive and exempt under Reg 12(4)(e). Having reviewed this information, we continue to consider that it is exempt from disclosure as negotiations for these land assets are ongoing. Disclosure of MHPA's anticipated expenditure would be very likely to prejudice its negotiations in respect of this proposed acquisition. In view of this commercial sensitivity, we are satisfied that the public interest in this case favours the application of the exception at Reg 12(4)(e) because of the public interest in ensuring that the Authority should be free, for the reasons given above, to discuss commercially sensitive matters at its Board Meetings on a confidential basis.



18. Solar Energy for Schools

In our original response commercially sensitive information was redacted from this section of the minutes on the basis that Reg 12(4)(e) applied. Having reviewed this information, we have concluded that the public interest favours the disclosure of this information.

Yours sincerely,

Mark Andrews

Corporate Affairs Director

