



Oil & Gas Authority

21 Bloomsbury
London WC1B 3HF

Helen Chuntso

By email to: request-446575-4f241b17@whatdotheyknow.com

Our ref: FOI-2017-0079

16 January 2018

Dear Ms Chuntso,

Thank you for your email of 15 November 2017 in which you requested:

"Please provide a copy of all email communications between OGA and Third Energy, detailing Third Energy's provision of the company insurance, to include

- i) the dates of all communications*
- ii) the name of the insurers*
- iii) the extent of the policy cover - including the total total liability covered*
- iv) any exclusions to the policy."*

1. We have considered your request under the Freedom of Information Act 2000 (FOIA) and, where relevant, the Environmental Information Regulations 2004 (EIRs).
2. Please find attached the letters of 10 May and 14 August, detailing OGA's initial request and Third Energy's Board letter with confirmation of Sufficient Contingency Funds for Proposed Activities. I can confirm that the insurance referred to has been renewed for the current year

Section 40(2) and Regulation 13(1)

3. You will note some information including the names and contact details of some of the individuals and all signatures has been redacted. The redacted information is being withheld under Section 40(2) FOIA and Regulation 13(1) EIR. Section 40(2) provides that personal data is exempt from disclosure where disclosure would result in a contravention of one or more of the data



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protection principles or would contravene Section 10 of the Data Protection Act 1998 ('**DPA**') which prohibits processing likely to cause damage or distress to a data subject. The data protection principles include that any processing of personal data must be fair and lawful and must comply with one of the conditions either in schedule 2 or 3 of the DPA. The provisions of Regulation 13 EIR mirror those of Section 40(2) FOIA.

4. The OGA considers that disclosure of the names, signatures and contact details of the individuals would breach the principles of fairness and lawfulness in this case. The individuals concerned do not have public facing roles and are acting in good faith in the discharge of their employment duties. In some cases those involved in the correspondence are acting as public servants. Given that the individuals are discharging their employment duties, and in some cases acting as public servants, the OGA considers that they have and are entitled to an expectation of privacy. In any event, the relevant individuals have not consented to their personal data being disclosed.
5. The OGA further considers that disclosure of the names of the individuals would, or would be likely to result in them suffering from undue harassment over and above the level normally expected to be tolerated by a public servant or those acting in an employment capacity on behalf of a private company. The OGA considers that disclosure of the names, signature and contact details of the individuals would breach the data protection principles of fairness and lawfulness. In light of this this is being withheld under Section 40(2) FOIA and Regulation 13(1) EIR.

Section 43(2) and Regulation 12(5)(e) EIRs

6. You will note that further information has been redacted from the body of the letter. Section 43(2) FOIA provides that information is exempt from disclosure if disclosure would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). Regulation 12(5)(e) of the EIRs provides that a public authority may refuse to disclose information to the extent the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
7. The OGA is withholding information in respect of Third Energy's specified levels of financial cover and the identity of the underwriter under Section 43(2) FOIA and Regulation 12(5)(e) EIR. One of the functions of the OGA is to regulate the oil and gas industry. In exercising its regulatory functions, the OGA considers applications for licenses for oil and gas exploration. In submitting an application for consent for further activities, Third Energy were required to submit information that included certain specific details of their insurance cover.



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8. Disclosure of this information would, or would be likely to, enable Third Energy's prospective future partners (including future insurance providers) to more accurately estimate their financial strength, needs, willingness and ability to pay and level of cover they would settle for when it comes to the matter of insurance and thus negotiate from an unfair position of advantage, thereby limiting Third Energy's ability to negotiate the best deal for themselves. This would effectively weaken Third Energy's position in a highly competitive environment.
9. In addition, it should be noted that the information was provided to the OGA in respect of its application for a Licence consent, pursuant to the OGA's position as regulator, with a view to obtaining such consent. But for the OGA's position as a regulator, the information contained within it would not have been provided. As such, the information provided has particular potential to damage the commercial and economic interests of Third Energy.
10. In withholding the requested information, the OGA has considered whether the public interest in withholding the information is outweighed by the public interest in disclosing the requested information. The OGA acknowledges that disclosure of the requested information can lead to greater transparency and enhanced scrutiny of public authorities. The need and desire for greater transparency must be balanced against the need to protect the commercial interests of both the public and private sectors and the OGA's objective of having an effective system of regulation.
11. The information set out at paragraph 2 above was provided to the OGA in the discharge of its statutory functions and in pursuance of its statutory and principal objectives. The OGA considers that should the requested information be disclosed this would inhibit companies operating on the United Kingdom Continental Shelf (UKCS) from being as open and frank as they are currently being, may discourage companies from disclosing the levels and types of information they are currently providing and may lead to companies adopting a more restrictive approach in the information shared with the OGA. While the OGA has statutory information gathering powers, should it become necessary for the OGA to obtain information by way of relying on its statutory powers, it will inhibit the OGA in the discharge of its functions and will make information gathering more time consuming and costly.
12. In this particular case, the OGA considers that the correct balance has been struck between transparency in letting the public know that a sufficient level of insurance cover does exist and preservation of the legitimate economic interests of the company concerned. The OGA does not consider that revealing the exact amounts of cover and the details of the underwriter would



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be of any greater service to the public that would outweigh the genuine harm that could be brought to Third Energy as a result.

13. In light of the matters set out at paragraphs 6-9 above, the OGA considers that disclosure of the exact amounts of insurance cover and identity of the underwriter, would, or would be likely prejudice the commercial interests of Third Energy. In light of the matters set out at paragraphs 10-12 above, the OGA considers that the public interest in withholding the requested information outweighs the public interest in disclosing the requested information. As such the requested information is being withheld pursuant to Sections 43(2) FOIA and 12(5)(e).

Section 41(1) FOIA and 12(5)(f) EIR

14. Also, in respect of the same information in the body of the letter, Section 41 FOIA provides that information is exempt from disclosure if it was obtained by the public authority from any other person (including another public authority) and the disclosure of the information (other than under FOIA) would constitute a breach of confidence actionable by that or any other person. Regulation 12(5)(f) provides that a public authority may refuse to disclose information to the extent that disclosure would affect the interests of the person providing the information in certain circumstances. Those circumstances include where the person did not supply it in circumstances such that that or any other public authority is entitled to disclose it and the party has not consented to disclosure.
15. The information provided to the OGA by Third Energy in relation to their insurance cover, was done so on the understanding that it would remain confidential and not be disclosed to third parties.
16. As set out at paragraph 8 et seq above, the information submitted includes commercially sensitive information in respect of the exact amounts of insurance cover and identity of the underwriter. This information is not currently in the public domain. This information was submitted by Third Energy in the course of seeking a Licence consent and as such it has the necessary quality of confidence to justify the imposition of an equitable obligation of confidence. In addition, the information was provided in circumstances that created an obligation of confidence and disclosure of that information would result in a breach in the obligation of confidence.
17. To breach this confidence would firstly be “*actionable*” – in that the parties concerned could bring a legal case against the OGA for breach of confidence and we consider that such an action would be likely to succeed. Further the OGA considers that disclosure of the information would have a “*chilling effect*”



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on the nature and type of information submitted by operators, where they are not obliged to do so by law, which would inhibit the OGA in on the nature and type of information submitted by operators which would, in turn, inhibit the OGA in the discharge of its principal objective¹ and statutory functions². The OGA considers that this “*chilling effect*” would undermine the OGA’s objective of creating a stable and effective system of regulation and as such is contrary to the public interest.

18. In light of the matters set out at paragraphs 14-17 above, the OGA is also withholding the information including in respect of the referenced specified levels of cover and the underwriter under Section 41(1) FOIA and Regulation 12(5)(f) EIR.

19. This concludes the OGA’s consideration of your request.

Appeals procedure

If you are unhappy with the way the OGA has handled your request, you may request an internal review. A request for an internal review should be made within 40 working days of the date of receipt of the response to your request and should be addressed to:

FOI Manager
Oil and Gas Authority
21 Bloomsbury Street
London
WC1B 3HF
Email: foirequests@ogauthority.co.uk

Please quote the reference number above in any future communications with regard to this request.

If you are unhappy with the outcome of the internal review, you may contact the Information Commissioner at www.ico.org.uk or at Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

FOI Officer

¹ To maximise the economic recovery of oil and gas in the UK Continental Shelf.

² Including the enforcement powers.

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