

Mr M Post
Via e-mail
request-159802-0becddfe@whatdotheyknow.com

Our ref WT 10448

10 July 2013

Dear Mr Post

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

Thank you for your e-mail of 25 June 2013 requesting all the development documents in respect of Marlow Weir that were submitted by SEPEL in accordance with EoI Phase II Part 3 Developer Submission Requirements, including: under the heading "Development", the required Development Programme; under the heading "Commercial", the required Development Costs, Commercial Arrangements and Lease Arrangements; under the heading "Risk", the Project Risk and, under the heading "Benefits", the Scheme Benefits.

Requests for information, by this I mean information in a recorded format, 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

- Under the heading "Development", the required Development Programme – This information has already been supplied to you on 21 June 2013
- Under the heading "Risk", the Project Risk – Please now find attached relevant document.
- Under the heading "Benefits", the Scheme Benefits – Please now find attached relevant document.

Please see the Standard Notice for details of permitted use.

Information withheld and Relevant Exception

Under the heading “Commercial”, the required Development Costs, Commercial Arrangements and Lease Arrangements - We have withheld all of this information under exception EIR Regulation 12(5)(e) commercial confidentiality. We have also blanked out the contractor’s names and any financial information from all the documents supplied to you, under the same exception.

Exemption 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 will arise as this proposal is active and as part of this process those contractors have a reasonable expectation that their details will be kept confidential. The contractors proposed are not confirmed and details could change prior to construction of the scheme. The financial details, would adversely affect the economic interests of SEPEL if released, as this information would give their competitors an unfair commercial advantage.

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 is that SEPEL operates in a highly specialised field and competitive market where a very limited number of companies can do the work. There is a public interest in ensuring that companies operate without the release of information that harms their competitiveness.
Whether the information is already public. In the case of the development proposal, it is not.
- **Contribution to public debate of issues.** There is clearly a high level of public participation in the debate over hydropower and we recognise your particular interest in the Marlow scheme.

2. Factors in favour of withholding the information:

- **‘Strength’ (and number) of grounds in the legislation.** There is a significant public interest in protecting the commercial interests of the private sector which plays an important role in the general health of the country’s economy. This is especially important in a small specialised field such as hydropower.
- **Whether any other laws or legal principles would be compromised.** There are contractual requirements of confidentiality and there is a public interest in allowing that such clauses be respected, even more so where companies are operating in a sector that allows the UK to meet EU environmental obligations, such as hydropower.
- **Whether confidential information can be separated from disclosable information that meets customer needs.** The information has been redacted to the least extent possible to allow the supply of information.

As indicated, upon assessing the factors in the public interest test, we have assessed that in relation to the commercially confidential information, we find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information.

Red Kite House, Howbery Park, Wallingford, Oxon OX10 8BD

Customer services line: 03708 506 506

Email: enquiries@environment-agency.gov.uk

www.environment-agency.gov.uk

We hope that we have correctly interpreted your request, but please do let us know if we can be of any further assistance.

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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