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19 October 2018

### **Internal Review of response to Freedom of Information Request FOI2018/07049**

I am writing following your email of 21 August asking for an internal review of the response to your Freedom of Information (FOI) request. I am the Director for Energy Development and Resilience in the Department for Business, Energy and Industrial Strategy (BEIS) and I undertook the review. When I carried out the review I considered the information which was withheld, and whether the original response to your request was correct. My decision is explained below.

Your original request was made on 24 July and asked for the following information:

*In a Parliamentary debate on July 10th 2018, Claire Perry, Minister for Energy and Clean Growth referred to a "very effective Shale Industry round-table" which she had held.*

*Would you please provide details of attendees and agenda for said meeting (and any similar group discussions with shale gas operators and the industry trade body) together with any and all minutes and other notes taken as a record of the meeting(s).*

*This information is requested in order that I and other interested members of the public may have full visibility and transparency of discussions that have influenced the Government's policy decisions in relation to shale gas exploration and development.*

The Department answered your request on 20 August 2018. This explained that:

*We have taken your request to mean the Shale Roundtable that the Minister of State hosted on 21 May 2018. After completing a search of our records, I can confirm the*

department holds some information in scope of your request.

The information held by the department is:

1. The agenda for the meeting – disclosed as attached
2. Draft notes of the event – partially withheld under S35(1)(a) and S41 of the Act

The information not held by the department is:

1. The list of attendees to the event

## **Section 35 – Formulation of Government Policy**

Section 35(1)(a) of the Freedom of Information Act sets out exemptions designed to protect good government and provide a safe space for policymaking.

Section 35(1)(a) exempts information from being released if it relates to the formulation or development of government policy. The information you have requested relates to the formulation and development of policy regarding shale gas extraction.

The use of section 35(1)(a) is subject to a public interest test. Whilst there is a public interest in favour of disclosing information relating to the Government's policy, we consider that releasing this information also poses a risk to the protection of the decision-making process and the Government's preparation of the review.

There is a public interest in ensuring that government has a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction, as well as ensuring that the UK can obtain the best possible outcome for our policy regarding Shale Gas extraction. We judge that disclosing this information would inhibit the frankness of future discussions, inhibit policy formulation and development, which would not be in the public interest. In our view, taking account of these factors, there is a strong public interest in withholding information.

## **Section 41 – Information Provided in Confidence**

Section 41(1) applies where information was provided to the Department from any other person (including another public authority), and, the disclosure of the information to the public would constitute a breach of confidence. Section 41 confers an absolute exemption from disclosure and as such no public interest test is required.

Your request for an Internal Review focussed on three points:

1. It is inconceivable that a Minister of State can hold a scheduled meeting with a formal agenda, attended by senior members of her department and other outside parties, without a record of attendees being kept. Security alone should dictate that attendees would sign-in, with prior notification of expected attendance, to ensure that participation is limited to those with a valid invitation or reason to be there. I would suggest that insufficient attempts have been made to identify and disclose the requested information.

2. Section 35(1)(a) of the Freedom of Information Act has been used to justify non-disclosure of references to parts of the Minister's presentation to the meeting. The argument used is that the public's interest in information being disclosed for reasons of transparency and understanding of

*Government policy is in itself an impediment to the decision making process. The implication is therefore that no visibility of the decision-making process is to be allowed and that the public interest in disclosure of relevant Government process is to be continually denied. I would suggest that this is not the intention of Section 35(1)(a) and would request that the balance of interests in this regard can be reconsidered. In particular, I will seek absolute confirmation that the redacted references to the Minister's presentation are of such sensitivity that disclosure to the public would impede ongoing formulation of Government policy.*

*3. Section 41(1) is used to withhold all notes taken after the Minister's presentation. This is a catch-all response that is only justifiable if all such notes relate to input from third parties to whom disclosure would represent a breach of confidence. Ministerial and Government Department comments would not be so protected and I must therefore ask that the reference notes are re-examined in line with my original request.*

After reviewing your original request and the Department's response, I believe that this request should have been treated under Environmental Information Regulations (EIR) 2004. I apologise that your original request was carried out under the Freedom of Information Act. In my response, I have considered your original request and the points that you have subsequently raised.

On your first question on the list of attendees to the roundtable, after conducting another search of our records, I can confirm that a list of attendees to the meeting does not exist. Upon further investigation, with regard your point on security, I can confirm that attendees' names were checked off against a record of invitees to the meeting, however this record of attendees was not kept. In the spirit of open government, I have recreated the list of organisations that the department believes attended the event. This is attached.

The second piece of information held by the department, as outlined in our original response, is a note of meeting, I have considered these notes in light of my decision to undertake this request under EIR.

I have considered that some of the information that was withheld under our original response should now be released. This is in the attached. Some of the information that was previously withheld under S35(1)(a) of the Act is now withheld under regulation 12(4)(d) of the EIR. Regulation 12(4)(d) is subject to a public interest test, which is below. Some of the information withheld under S41(1) is now withheld under regulation 12(5)(f) of the EIR. Regulation 12(5)(f) is subject to a public interest test, also below. In addition, some of the information that was withheld under S41(1) of the Act is now withheld under regulation 12(4)(d) of the EIR.

*Regulation 12(4)(d) - Material in the course of completion, unfinished documents and incomplete data.*

Regulation 12(4)(d) of the Environmental Information Regulations 2004 provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents or incomplete data.

The information that is withheld falls within the 'material still in the course of completion' part of this exception. In considering the public interest we have applied a presumption in favour of disclosure as required by regulation 12(2) of the EIRs.

We consider the evidence is part of material that is still in the course of completion as it references policy that is intended for later publication. We recognize that there is a general public interest in disclosure as greater transparency increases public scrutiny and confidence in government. However, we consider that there is also a public interest in ensuring that all relevant information is collected together and published as part of a wider package, rather than being released in a piecemeal fashion. Therefore, we have concluded that the balance of public interest lies in withholding that information.

*Regulation 12(5)(f) – Interests of the person who provided the information to the public authority.*

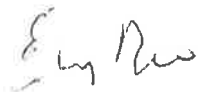
Regulation 12(5)(f) of the EIR allows a public body to withhold information if the disclosure would adversely affect the interests of someone who supplied the information, and that person supplied it expecting that it would not be disclosed to a third party. The purpose of this exception is to ensure the free flow of volunteered information to government, as in this case.

In applying this exception, we have considered whether the public interest in withholding the information is outweighed by the public interest in disclosing the information, as required by Regulation 12(2) of EIRs. The courts have maintained that there is a very strong general public interest in protecting confidences and this could only be superseded by an overriding public interest in disclosure.

An example of this would be if the information revealed iniquity or fraud or disclosure was necessary to protect the public from harm. However, none of these factors are present in the information requested. We therefore consider that the general public interest in having information made available is not a sufficiently compelling public interest capable of overriding the very strong public interest in maintaining the confidentiality of this information.

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

Yours sincerely,



**Emily Bourne, Director, Energy Development and Resilience  
BEIS**