



Oil & Gas Authority

21 Bloomsbury
London WC1B 3HF

Benjamin Dean

By email to: request-557869-0ca637a8@whatdotheyknow.com
and
request-557870-64a3f6f5@whatdotheyknow.com

Our ref: FOI-2019-0011 & FOI-2019-0012

2 May 2019

Dear Mr Dean,

Further to your letter of **Sunday 3 March 2019** and your response to a request for clarification of **19 April 2019**, in which you requested:

"Please treat this email as a request under the Environmental Information Regulations 2004, alternatively the Freedom of Information Act 2004.

Please provide a copies of the Deeds of Variation for AL006, DL005, PL079, PL080, PL081 and PEDL177 and any relevant correspondence with the operator Third Energy varying the these licenses work commitments as detailed in your spreadsheet headed "Retention Areas Agreed (Updated December 2018) 2014 Model Clauses."

Please provide a copy of the Deed of Variation for PEDL193 and any relevant correspondence with the operator Igas varying the PEDLs work commitments as detailed in your spreadsheet headed "Retention Areas Agreed (Updated December 2018) 2014 Model Clauses."

And

"Please for PEDL193 provide any correspondence for the Licence Operator Ineos Upstream Limited as well as for Igas Plc that is relevant to the Work Area Retention Plan referred to in your December 2018 spreadsheet. Please also forward the Deed of Variation for this Work Area Retention Plan."

1. We have considered your request under the Freedom of Information Act 2000 (FOIA) and, where relevant, the Environmental Information Regulations 2004 (EIRs).

Deeds of Variation - Licences

2. Please find attached a copy of the Deeds of Variation for Licences [AL006, DL005, PL077, PL079, PL080, PL081 PEDL193 and PEDL177]. Please note

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that PDL77 was grouped with the application and therefore we are disclosing this as well.

Deed of Variation – Retention Area Work Plans

3. Please find attached a Deed of Variation for the Retention Area Work Plan (“the Work Plans”) for PEDL [AL006, DL005, PL077, PL079, PL080, PL081 and PEDL177] and PEDL 193.

Correspondence with Third Energy

4. Please find attached the correspondence between the OGA and Third Energy in respect of the Licences referred to at paragraph 2 above.

Correspondence with Ineos - PEDL 193

5. Please find attached correspondence between the OGA and Ineos in regard to PEDL 193.

Correspondence with Igas – PEDL 193

6. There has been no correspondence between the OGA and Igas in regard to PEDL 193.
7. You will note some of the information which has been disclosed has been redacted. The redacted information is being withheld from disclosure under Sections 40, 41 and 43 FOIA and Regulations 12(5)(e) and 13 EIR. An explanation of our reliance on the exemptions/exceptions is set out below.

Section 40(2) FOIA and Regulation 13(1) EIR (personal data)

8. The signatures, and contact details contained in the correspondence and the Deeds of Variation have been withheld. The names of some of the witnesses in the Deeds of Variation have also been withheld.
9. This information is being withheld under *Section 40(2) and 40(3A) FOIA* and *Regulation 13(1) EIRs*. *Section 40(2)* provides that personal data is exempt from if one of the conditions in 40(3A) is satisfied. One of the conditions in *Section 40(3A)* is a breach of any of the data protection principles in the *Data Protection Act 2018* (**‘DPA’**). The data protection principles include that any processing of personal data must be fair and lawful. The provisions of *Section 13 EIRs* mirror those of *Section 40(2) FOIA*.



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10. The OGA considers that disclosure of the names, signatures and contact details of the individuals would breach the principles of fairness and lawfulness. The individuals whose details have been withheld have and are entitled to an expectation of privacy. In any event, the relevant individuals have not consented to their personal data being disclosed.
11. As such, disclosure would meet neither the fair nor lawful processing principles. In light of this, this is being withheld under *Sections 40(2) and 40(3A) FOIA* and *Regulation 13(1) EIR*.

Section 41(1) FOIA (Information provided in confidence)

12. Some information in respect of the work plans for the retention areas are also being withheld. *Section 41(1) 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 disclosure would constitute a breach of confidence actionable by that or any other person.
13. The information (the RA work plans) was provided to the OGA in the course of discharging its statutory functions. But for the exercise of its statutory functions the OGA would not be able to obtain information in respect of the Work Plans. The circumstances in which the OGA obtained the Work Plans was such that it has the necessary quality of confidence to justify the imposition of an equitable obligation of confidence. To breach this confidence would firstly be “actionable” – i.e. the company who prepared and provided the Work Plans could take legal actions case against the OGA for breach of confidence and the OGA considers that such as action would be likely to succeed.
14. While *Section 41* is an absolute exemption which does not usually require consideration of the public interest, the OGA has nonetheless considered whether it is in the public interest for the requested information to be disclosed. In this particular case, the OGA considers there to be a greater risk to the Third Energy, Ineos and Igas and the industry in general in disclosing information in regard to the Work Plans. Not only would it be likely to result in a public body being taken to Court and liable for substantial damages, disclosure would also be likely to affect confidence in the OGA and its statutory purpose of creating an effective and stable system of regulation. The OGA considers that the harm of disclosing Ineos, Igas and Third Energy’s work plans outweighs the harm which would or would be likely to arise as a result of disclosure.

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



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15. *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) EIR 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.
16. In exercising its regulatory functions, the OGA obtains information such as Work Plans and subsequent amendments.
17. The OGA considers that disclosure of the Work plans, would impact on the companies' ability to negotiate with local landowners for access to the well site locations. Further, the OGA considers that disclosure of information contained in the Work Plans would or would be likely to put landowners and their businesses at risk. Disclosure may also negatively impact the local community where the work is taking place as it would cause significant speculation as to the location of future operations ahead of any definitive decisions being made. Such disclosure would or would be likely to prejudice the commercial interests of the respective companies by disrupting and jeopardising negotiations with third parties, including land owners (land owners included). making it difficult or impossible for the Work Plans to be completed. This would, or would be likely to, prejudice the commercial interests of the respective companies.

Public Interest

18. 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. However, 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.
19. Therefore, in light of the matters set out above, the requested information is being withheld pursuant to Sections 43(2) FOIA and Regulation 12(5)(e) EIR.

Advice and assistance

20. For further information, you may wish to see the RA plan agreed with Third Energy on the OGA website -
<https://www.ogauthority.co.uk/media/5260/retention-areas-agreed-december-2018-updated.pdf>
21. This concludes the OGA's consideration of your request.

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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