



Department
of Energy &
Climate Change

Department of Energy
& Climate Change
3 Whitehall Place,
London SW1A 2AW
www.gov.uk/decc

lee.moroney@ref.org.uk

Ref: EIR 13/1050

2 September 2013

Dear Dr Moroney,

Thank you for your letter of 5 August 2013, which made the following request:

All emails, letters, correspondence, agenda, minutes and notes of meetings, reports and data relating to the recent Institute of Acoustics (IoA) consultation and preparation of a Good Practice Guide (GPG) on the application of ETSUR-97 for wind turbine noise assessment dated 1 October 2012 to date.

We have considered your request under the Environmental Information Regulations 2004 (EIRs), as the information you have sought disclosure of, in our view, falls within the definition of 'environmental information' as provided thereunder. Your letter also sought an Internal Review into the decision not to release information in relation to your first request, and requested clarification of part of our response of 18 July 2013. We will be responding to you separately on these issues.

I can confirm that the Department holds information within the scope of your request and I have enclosed this information, subject to redaction and/or exclusion of information according to the exceptions described below. I can also confirm that from the 1 October 2012 to date, DECC has received 36 items of



Department
of Energy &
Climate Change

correspondence from the general public about the IOA's good practice guidance. We are withholding these 36 items under the exception from disclosure in Regulations 12(3) and 13 of the EIRs. For more information about this exception please see below.

Details of the relevant exceptions used in relation to the remaining information are explained below:

Regulations (12) (4) (d) and (e) – Unfinished documents and internal communications

Regulation 12 (4) (d) of the EIRs allows information to be withheld if it relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

Regulation 12(4) (e) allows information to be withheld where it relates to the disclosure of internal communications.

Following careful consideration, we have decided not to disclose those internal communications relating to comments on draft documents, in line with Regulations 12 (4) (d) and 12 (4) (e) of the EIRs .

Exceptions under regulation 12 of the EIRs are subject to the public interest test. In applying these exceptions we have had to balance the public interest in withholding the information against the public interest in disclosure, applying of course the presumption in favour of disclosure in EIR Regulation 12(2).

We recognise that the decisions Ministers make have a significant impact on the lives of citizens and there is a public interest in this process being transparent. We also recognise that greater transparency makes government more accountable to the electorate and increases trust. There is a public interest in providing the public with the information it needs to satisfy itself that the process by which government develops policy is of a high quality. In addition, we recognise that, as knowledge of the way government works increases, the public contribution to the policy making process could become more effective and broadly-based.



However, it is important that Ministers and policy officials retain the ability to debate issues relating to policy formulation freely and in confidence, before reaching a view and reflecting that in documents. If Ministers and policy officials knew or thought that once a decision was reached, their communications in arriving at that point were to be disclosed, they might be less candid in expressing their views at the time. This would detract from the full and frank exchange of views that is necessary during policy formulation and would jeopardise the ability of the Ministers to take decisions based on full advice and consideration of all the options.

In view of the considerations set out above, and in all the circumstances of this case, we consider that the public interest in maintaining this exception outweighs the public interest in disclosing the information.

Regulation 12(5)(b) and 12(5)(e) – The course of justice and commercial confidentiality

Under Regulations 12(5)(b) and 12(5)(e) we are withholding commercial information and legal advice (provided by in-house lawyers).

Exceptions under regulation 12 of the EIRs are subject to the public interest test. We have applied a presumption in favour of disclosure as required by regulations 12(2) of the EIRs. In applying these exceptions we have had to balance the public interest in withholding the information against the public interest in disclosure.

Regulation 12(5)(b) exempts information from disclosure where the disclosure of information would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature



Department
of Energy &
Climate Change

There is a strong public interest in the protection of the principle of legal professional privilege which allows Government Departments to consult their lawyers in confidence, to be able to share information fully and frankly and to seek and obtain advice with the knowledge that such advice is privileged. Government needs to take decisions in a fully informed legal context and it is necessary for its lawyers to be able to fully explore the relevant arguments. To ensure that lawyers and officials are free to fully examine the various alternatives, their deliberations should be protected.

We believe there is a general public interest in the disclosure of information as greater transparency makes Government more accountable and there is a public interest in being able to assess the quality of information and advice which is used by Departments.

Therefore whilst we acknowledge the public interest arguments in favour of disclosure as discussed above, we consider that the public interest balance in this case falls on the side of not disclosing the legal advice the Department has received.

Regulation 12(5)(e) of the EIRs exempts information from disclosure where the disclosure of information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

We recognise that the general public have an interest in the disclosure of information and this can lead to greater transparency in Government decision making. However there is also a strong public interest in ensuring that the commercial and economic interests of external businesses, including public bodies, are not damaged or undermined by disclosure of information which is not common knowledge and which could adversely impact on future business. We believe that to release the information you have



**Department
of Energy &
Climate Change**

requested would be prejudicial to the commercial and economic interests of the commercial companies.

Having considered the public interest, the Department's decision is to withhold the information. In applying this exception we have had to balance the public interest in withholding the information against the public interest in disclosure.

Regulations 12(3) and 13 – Personal Data

You will note that we have redacted personal information from the enclosed information. Regulations 12(3) and 13 of the EIRs prevent disclosure of personal data in accordance with certain provisions under the Data Protection Act 1998 (DPA). Personal data of third parties can only be disclosed subject to the data protection principles. In particular, the first data protection principle requires that disclosure must be fair and lawful and must comply with one of the conditions in Schedule 2 of the DPA. We do not think it is fair to release the names and contact details of DECC staff below Senior Civil Service level, or staff in other organisations, or letters written to DECC by members of the public, and we do not think that any of the relevant conditions in Schedule 2 of the DPA apply. As a result, the names and contact details of staff in DECC below Senior Civil Service level and other organisations have been redacted from these documents, and the letters from members of the public have not been provided.

Appeals Procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 40 working days of the date of receipt of the response to your request and should be sent to the Information Rights Unit at:

Information Rights Unit (DECC Shared Services)

Department for Business, Innovation & Skills



Department
of Energy &
Climate Change

1 Victoria Street

London

SW1H 0ET

E-mail: foi@decc.gsi.gov.uk

Please remember to quote the reference number above in any future communications.

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,

BIS Information Rights Unit