



Department for
Business, Energy
& Industrial Strategy

Department for Business, Energy &
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Our ref: FOI2016/24248

2 November 2016

Dear Mr Lux,

Thank you for your email of 21 September 2016 where you requested the following information:

I am requesting the document(s) that were produced by your department for the 'review' of the planned Hinkley C Power Station which was undertaken July - September 2016.

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

In our view, some of the information in your request falls under the Freedom of Information Act 2000 (FOIA) and some within the definition of 'environmental information' stated in the Environmental Information Regulation 2004 ('the EIRs'). Your request has therefore been considered under the terms of both the FOIA and EIRs.

In considering the public interest we have applied a presumption in favour of disclosure as required by regulation 12(2) of the EIRs. The FOIA does not contain a similar provision, but BEIS applies the same principle to requests that come within the ambit of that legislation.

We have searched for the information related to your request and have concluded that we do hold information falling within its scope.

After careful examination, the Department considers that all the information requested is exempt from disclosure under both the FOIA exemptions and the EIRs exceptions, and is therefore withheld:

FOIA exemption:

- Section 41(1) – information provided in confidence
- Section 43(2) – likely to prejudice the commercial interest of any person
- Section 35(1)(a) – formation of Government policy
- Section 21 – information already reasonably accessible

EIRs exception:

- Regulation 12(5)(e) – confidentiality of commercial information
- Regulation 12(4)(e) – internal communications

In considering the public interest we have applied a presumption in favour of disclosure as required by regulation 12(2) of the EIRs. The FOIA does not contain a similar provision, but BEIS applies the same principle to requests that come within the ambit of that legislation.

Section 35(1)(a) FOI - formation of Government policy and Regulation 12(4)(e) EIRs – Internal Communications

Section 35(1) (a) of the FOIA provides an exemption for information that relates to the formulation or development of Government policy and Regulation 12(4)(e) of the EIR's makes the provision whereby internal communications of a public authority including correspondence between officials in any government department and between any government departments may be protected under this exception. The rationale behind this exception is that it is often in the public interest that public authorities have a space within which to think in private as recognised in the Aarhus Convention. This exception is subject to the public interest test. In considering this exception we have applied a presumption in favour of disclosure.

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 in subsequent policy formulation. However, against this there is a public interest in ensuring that the formulation and development of government policy and government decision making can proceed in the self-contained space needed to ensure that it is done well. We believe that, if officials were conscious that such advice made in an internal document could be made public, frankness would inevitably be inhibited, and policy decisions would be made without full consideration of the issues. In our view, therefore, we believe that the balance of the public interest lies in withholding the information you have requested.

We believe it is not in the public interest to release the documents requested. We believe that the details released during the announcement of the minded to decision <https://www.gov.uk/government/news/government-confirms-hinkley-point-c-project-following-new-agreement-in-principle-with-edf> and the Secretary of States statement to Parliament <https://hansard.parliament.uk/Commons/2016-09-15/debates/1609152700002/HinkleyPointC> provide the public with sufficient information on the deal, which meets the public interest arguments as regards disclosure on the Hinkley Point C contract , and in our view section 35(1) (a) and Regulation 12(4)(e) apply.

Section 41(1), 43(2) FOI and regulation 12(5)(e) of EIRs – likely to prejudice confidentiality of commercial interests

Section 41(1) provides that information is exempt if disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person. Some of the information requested is detailed information provided to the Department in confidence. This information is subject to a duty of confidence and disclosure of the information would constitute an actionable breach of confidence. We have therefore reached the view that the information is exempt from disclosure by virtue of section 41.

Section 43(2) provides that information may be exempt information, subject to the public interest test, if the release of the information would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding. Section 43(2) is a qualified exemption. To the extent this information is environmental, it is being considered with the exception under regulation 12(5)(e) where the disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect legitimate economic interests.

We are satisfied that the release of much of the information around the review on Hinkley Point C could damage and adversely affect the commercial position of the Government and the developer.

We have also considered the impact that releasing the information would have on maintaining the trust and confidence between the Department and companies who engage with us. If the Department does not respect such confidences its ability to engage meaningfully with companies and other stakeholders would be likely to be prejudiced, resulting in damage to the Department's own commercial interests.

In terms of the public interest balancing test it is in the public interest that the Department's commercial activities are conducted in an open and honest way. However disclosure of information in this case, in a particularly high profile area would make it less likely that companies would provide the Department with commercially sensitive information in the future. This would undermine the ability of the Department to properly fulfil its role in assessing the relevant commercial factors and is contrary to the public interest.

Section 21 FOI information already reasonably accessible

Section 21 of the FOIA provides that information is exempt if it is reasonably accessible to the applicant by other means.

Since your request was received the "revised agreement with EDF" has been published. This includes the Contract for Difference agreed for Hinkley Point C and the Secretary of State Investor Agreement. There are a few redactions to those documents which are highlighted

within the published versions. We are withholding the information which has been redacted in the published versions of the contracts for the reasons given above in relation to section 41 and 43(2) FOIA and regulation 12(5)(e) EIRs. The redacted portions are confidential by virtue of provisions of those contracts. The Hinkley Point C documents can be found at <https://www.gov.uk/government/news/hinkley-point-c-contract-signed>.

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 two months of the date of receipt of the response to your original request and should be addressed to the Information Rights Unit:

Information Rights Unit
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET
Email: FOI.Requests@bis.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,

COMMERCIAL TEAM