

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 July 2014

Public Authority: Department of Energy and Climate Change

Address: 2 Whitehall Place

London

SW1A 2AW

Decision (including any steps ordered)

1. The complainant has requested correspondence, minutes, reports and data relating to the Institute of Acoustics (IoA) consultation and preparation of a Good Practice Guide on the application of a particular wind turbine noise assessment. DECC identified a number of documents and emails which were within the scope of the request and disclosed some of this during the course of the Commissioner's investigation. The remaining information was withheld on the basis of regulation 12(3), 12(4)(d), 12(4)(e) and 12(5)(b).
2. The Commissioner's decision is that regulation 12(3) is engaged and the information identified as personal data has been correctly withheld. Information subject to the regulation 12(4)(d) exception that does not also engage the regulation 12(4)(e) exception should be disclosed and the remaining information which constitutes internal communications has been correctly withheld.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the four emails and their embedded/attached documents as identified in paragraph 47 of this notice with appropriate redactions under regulation 12(3).

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 August 2013, the complainant wrote to the Department of Energy and Climate Change ("DECC") and requested information in the following terms:

"Please provide 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 ETSU-R-97 for wind turbine assessment dated 1 October 2012 to date."

6. DECC responded on 2 September 2013. It stated that it considered the information requested to be environmental information and therefore was considering it under the EIR. DECC confirmed it did hold information within the scope of the request and enclosed some information with redactions where information was considered exempt. DECC explained it had identified 36 items of correspondence from the public and these were being withheld on the basis of regulation 12(3) and 13 of the EIR. For the remaining information DECC had applied regulation 12(4)(d) and (e), 12(5)(b) and (e) and 12(3) as a basis for withholding this from disclosure.
7. The complainant requested an internal review on 8 October 2013. He raised concerns with the information disclosed, considering that some of the redactions were excessive to the point where it was not possible to identify the organisations that were corresponding. He also argued some emails were missing as they were referred to in other emails but not provided.
8. Following an internal review DECC wrote to the complainant on 2 December 2013. It stated that it upheld its decision to withhold information under the exception as set out in its refusal notice but did identify one further document that could be disclosed. DECC also explained that the parent emails which were withheld related to material in the course of completion and constituted internal communications so engaged the regulation 12(4)(d) and (e) exceptions. In terms of the redactions; DECC maintained the information was correctly redacted as it constituted personal data.

Scope of the case

9. The complainant contacted the Commissioner on 14 January 2014 to complain about the way his request for information had been handled.
10. During the course of his investigation, DECC reconsidered the request and determined that some information it had previously considered to be exempt – key details on the consultation run by the IoA¹ and information on the payment of the GPG² – was in the public domain. This information had previously been withheld under regulation 12(5)(e).
11. DECC also clarified that the 36 items of correspondence it had identified from the general public about the GPG were not all within the scope of the request as some of them were not in fact about the GPG. DECC narrowed this down to ten items of correspondence and consulted with the relevant correspondents to establish if they had any objections to disclosure. As a result of this nine of the ten items of correspondence were provided to the complainant. DECC has clarified the tenth item of correspondence is subject to the regulation 12(3) exception.
12. The remaining withheld information has been withheld on the basis of regulation 12(4)(d) and (e) and 12(3) and, in one case, regulation 12(4)(b).
13. The Commissioner considers the scope of his investigation to be to determine if DECC has correctly withheld information within the scope of the request on the basis of regulation 12(4)(b), 12(4)(d), 12(4)(e) and 12(3) of the EIR.

¹ <http://www.ioa.org.uk/news/wind-turbine-notes-consultation>.

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65452/308-121633-decc-payments-institute-acoustics.pdf

Background

14. In 2011 DECC asked the IoA to develop good practice guidance to accompany the existing guidelines on the rating and assessment of wind turbine noise. DECC chaired a cross government oversight group that included the Department for Communities and Local Government (DCLG), the Department for the Environment, Food and Rural Affairs (DEFRA), the Devolved Administrations, the Department of Health (DoH) and the IoA.
15. This oversight group was put in place to oversee the production of the guidance, monitor timescales and ensure the project delivered value for money. The guidance was published in May 2013 and is used to assess the noise impacts of wind farms.

Reasons for decision

Regulation 12(4)(d) – material still in the course of completion

16. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
17. Regulation 12(4)(d) is subject to the public interest. Therefore, in addition to demonstrating that the withheld information falls within the definition of the exception, the public authority must also demonstrate that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
18. DECC has applied this exception to correspondence between members of the cross government oversight group and, in one case, an email between DECC and an external management organisation, on the subject of the draft GPG by the IoA. The emails all discuss the draft GPG and most attach various iterations of the GPG as it was peer reviewed and updated prior to finalisation and publication.
19. DECC considers that these emails engaged the exception because they contained comments of working drafts of the GPG as well as attached incomplete or draft versions of the GPG. The Information Tribunal³ has

³ *Secretary of State for Transport v Information Commissioner (EA/2008/0052)*

previously determined that draft versions of guidance would fall within the definition of this exception and continue to constitute unfinished documents or information in the course of completion even when a final version is completed and issued.

20. The Commissioner has issued guidance on this exception⁴. This states that:

"The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion."

21. The Commissioner has viewed the emails, the comments on the draft GPG contained in these emails, and the peer-reviewed versions of the GPG attached to some of the emails; whilst he notes that the document that is commented on appears to be a near finalised draft, he accepts DECC's position that the document and the discussions around it, are in relation to an unfinished version of the GPG. The discussions and comments around the GPG relate to the formulation of DECC's final version of the guidance.
22. Taking into account the view of the Tribunal and his guidance on this issue, the Commissioner therefore considers that regulation 12(4)(d) is engaged in relation to these emails. He has now gone on to consider the public interest test.

Public interest arguments in favour of disclosure

23. DECC has acknowledged there is a public interest in various iterations of documents being made available to the public, including those showing formative ideas and the decision making process, in order to increase transparency and allow the public to see how final guidance is reached.
24. The complainant considers there is a strong public interest in the disclosure of any information that may demonstrate the drafting process and show that the GPG was produced after consideration of all valid concerns. He has argued that it is important the public are able to see if

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http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx

considerations other than noise had an impact on the final noise policy guidance and the degree of protection offered to the public.

Public interest arguments in favour of maintaining the exception

25. DECC has argued that disclosing draft documents, and the discussions around the draft version of the GPG, would not be in the public interest. The GPG is on a technical area of planning and development policy and it would be likely to cause confusion and undermine the final version of the guidance if the draft was to be disclosed, particularly as the GPG is a key piece of technical guidance designed to help the Planning Inspectorate properly assess wind turbine noise when considering planning applications.
26. DECC considers the information withheld contains honest and frank exchanges and comments which it would not be in the public interest to disclose.

Balance of the public interest arguments

27. The Commissioner received limited arguments from DECC in relation to the public interest test for this exception. He has therefore gone on to make his decision on the basis of the arguments he was provided with.
28. In considering the balance of the public interest arguments the Commissioner has focused on two main issues: the timing of the request and the content of the information itself. The timing of the request is particularly important when considering the argument that disclosure would invade the 'safe space' needed to discuss draft reports in a frank and open manner.
29. The Commissioner accepts the merit of such an argument in the production of guidance intended to inform decisions on issues such as those which are the focus of this request. However, he considers that the need for such a space diminishes significantly when the development of a report, policy or guidance has been completed. This is because once the decision making process has been completed there is little or no need to protect the discussion of 'live' issues. In this case, by the time the request was made the GPG had been published, therefore there was no longer any need for a safe space to be maintained.
30. With regards to the potential 'chilling effect'; this argument is primarily concerned with the argued loss of frankness and candour in advice which would be likely to occur from the disclosure of the information, leading to poorer quality advice and less well formulated decisions.
31. As the GPG had been published at the time the request was made the Commissioner does not accept that there would be any impact on the

frankness and candour with which relevant parties would contribute to advice on the GPG. On a broader level, the chilling effect can be argued in relation to the impact on the frankness and candour of advice and debate on future, different matters. In cases where publication has already occurred the Commissioner is cautious about accepting that the disclosure of information about an issue which is no longer 'live' could impact on the candour of future advice about other issues. In order to accept this as more than speculative he would expect a public authority to be able to provide evidence to indicate why it consider this to be a likely possibility.

32. In this case, DECC has not provided any specific evidence to support its reliance on the chilling effect beyond a general assertion that disclosure would be likely to affect the frankness and candour of debate. The Commissioner's view is that the individuals who are involved in government oversight groups will continue to carry out their public duties to thoroughly and robustly ensure guidance and policy is properly developed regardless of any previous disclosures made under the EIR or FOIA. The Commissioner therefore attributes little weight to the argument that there would be any chilling effect as a result of disclosure.
33. The Commissioner recognises the central arguments in favour of disclosing the information relate to transparency and accountability and the importance of being able to understand the process by which the final guidance position was reached.
34. The GPG is intended to be used to assess and rate wind turbine noise. The issue of noise from wind turbines and the impact of this on health is one which has generated interest from various groups⁵. For this reason, there is an argument that any information on this subject matter that would assist in understanding how decisions on issues around this were made would be in the public interest.
35. However, the Commissioner notes that the information actually withheld under this exception relates to the peer-review process that the GPG

⁵ <http://www.renewableenergyworld.com/rea/news/article/2013/02/wind-farms-a-noisy-neighbor>

<http://www.telegraph.co.uk/earth/energy/windpower/9653429/Wind-farm-noise-does-harm-sleep-and-health-say-scientists.html>

<https://www.wind-watch.org/documents/bad-science-behind-the-wind-turbine-noise-guidelines/>

underwent and emails between members of the oversight group suggesting changes to the GPG as a result. This is a technical document and is not intended to set out the government's policy on what is an acceptable level of wind turbine noise, but is supposed to provide guidance for Planning Authorities on how to consider the impact of wind turbine noise when making a decision on planning approval.

36. The Commissioner notes that the GPG in this case was commissioned by DECC because a previous report (ETSU-R-97) on wind farm noise guidance was in need of revision⁶. This National Policy Statement from DECC on renewable energy infrastructure states that a peer-review report had found that ETSU-R-97 was inconsistently applied and better guidance was needed on best practice for developers and planning authorities. As a result the new GPG was commissioned.
37. The complainant therefore considers there is a strong public interest in information relating to the development of this new GPG being disclosed in order to allow for scrutiny of the evidence base for the revised guidance. The proposed guidance had been subject to a consultation period and the complainant is of the view that some of the consultation responses were critical but these criticisms were not addressed in the published GPG.
38. The Commissioner has considered these points made by the complainant and the content of the withheld information to determine whether disclosure of this information would provide for better scrutiny of the process for drafting the GPG and whether the earlier iterations of the GPG referred to in the emails show significant revisions which would allow for greater scrutiny of the process.
39. The Commissioner does accept the general point that there is value in understanding how the final guidance was arrived at and there may be some merit in seeing how the peer review process worked. However, having considered the content of the emails and having looked at the peer review documents and iterations of the GPG embedded in these emails, the Commissioner's view is that these are primarily technical documents at a late stage of development. There do appear to be some revisions from the final version of the GPG but it is not clear that these would assist the public in scrutinising the evidence base and providing a

⁶ http://whitehall-admin.production.alpha.gov.co.uk/government/uploads/system/uploads/attachment_data/file/37048/1940-nps-renewable-energy-en3.pdf

narrative of how and why revisions were made, particularly at such a late stage in the process when the GPG was being peer reviewed.

40. In this case, DECC has not provided any compelling arguments to demonstrate that the public interest in maintaining this exception outweighs the public interest in disclosing this information. The Commissioner also does not consider there are persuasive arguments for disclosure as the draft documents and the emails that accompany them would be unlikely to inform debate and allow for scrutiny of the process as the drafts were at a late stage. That being said, disclosure would increase transparency and accountability at a point without any likely impact on the safe space due to the publishing of the GPG by the time the request was made.
41. As there is a presumption in favour of disclosure in the EIR and the arguments for withholding the information are not afforded much weight, the Commissioner considers that the arguments in favour of disclosure, although also not compelling, do outweigh those in favour of withholding the information.

Regulation 12(4)(e) – prejudice to internal communications

42. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. DECC has applied this exception to correspondence between members of the cross government oversight group and, in four cases, emails between DECC and an external management organisation, on the subject of the draft GPG by the IoA.
43. The Commissioner considers that communications within one public authority will constitute internal communications for the purpose of this exception. All central government departments (including executive agencies) are deemed to be one public authority. However, communications between a public authority and a third party will not constitute internal communications except in very limited circumstances. The definition of a communication is broad and will encompass any information intended to be communicated to others or to be placed on file where it may be consulted by others.
44. Based on the broad description of what constitutes a “communication”, the Commissioner accepts that the information withheld under this exception would be ‘communications’. The issue is then whether these documents can be deemed to be internal communications.
45. The Commissioner has identified emails sent between DECC and various other government departments such as DEFRA, discussing the draft GPG. As these communications are between members of the cross

government group and are other departments of government the Commissioner accepts they are internal communications and will consider the public interest test in relation to them.

46. However, several emails (four) that have been withheld are either sent from a representative of a third party management company or have been copied to this company. This company is not a government department or part of one and is therefore a third party.
47. As this company is not considered a government department or part of one, the Commissioner considers that any emails and discussions around documents sent between DECC and this company would fall outside the scope of the internal communications exemption. As such the Commissioner has not found the exception to be engaged in relation to these documents and, as he has already concluded the public interest test in relation to the 12(4)(d) exception (which had also been applied to these emails) favours disclosure, he requires DECC to disclose these emails and any attachments which for clarity are dated:
 - 4 April 2013 17:42 between Office for Renewable Energy Development (ORED) and third party company;
 - 19 March 2013 08:15 between third party company and ORED;
 - 26 April 2013 16:50 between DEFRA and ORED and third party company; and
 - 22 April 2013 12:10 between ORED and third party company.
48. For the remaining emails which engage regulation 12(4)(e) the Commissioner has gone on to consider the public interest arguments.

Public interest arguments in favour of disclosure

49. The Commissioner has considered the public interest arguments in favour of disclosing the emails which he considers constitute internal communications, ie those sent solely between government departments.
50. DECC has stated it recognises there is a public interest in the disclosure of this information as greater transparency makes for more accountability. As well as this there is a public interest in being able to assess the quality of information and advice which is used in subsequent policy formation.
51. The complainant has argued that full disclosure of all of the information around the drafting and acceptance of the GPG is in the public interest as it would show what considerations had a significant effect on the final noise policy guidance and the degree of protection offered to the public.

Public interest arguments in favour of maintaining the exemption

52. The main arguments put forward by DECC in support of maintaining the exception relate to the fact that the exchanges contained in the emails were honest and frank, with members of the oversight group often playing 'devil's advocate' to lead to robust discussions and decisions. DECC considers disclosure of the information in the emails between members of the oversight group may lead to a 'chilling effect' on future discussions with an impact on the quality of decision making.
53. DECC has consulted with the other government officials involved in the correspondence who have made it clear that if they thought their views would be made public the nature of their discussions would have been very different and they would have been more guarded in their comments. This would in turn have impacted on the quality of the process. DECC therefore considers that disclosure of this information will affect the frankness of discussions and communications and consequently the quality of decision making.
54. DECC has stressed that at the time of the request the GPG had only recently been published, however in recognition of the public interest inherent in the EIR it did disclose the majority of the information within the scope of the request but considered these communications should be withheld due to the strong public interest in protecting a 'safe space' for officials to have candid discussions on live issues away from public scrutiny.

Balance of the public interest arguments

55. The Commissioner recognises there is a public interest in transparency, openness and accountability in relation to decisions made by government to instigate new guidance or policy. In this case he acknowledges there is a strong public interest in issues surrounding wind turbines and the opposing views on the impact of noise generated by wind turbines. However, the information withheld under this exception consists of emails between members of the government oversight group, discussing a draft version of the GPG and the peer reviewing of this document. The peer review process was focussed on asking for comments on the technical aspects of the GPG so it is likely to be of limited value in enhancing the public's understanding of the government's position on wind turbines and noise.
56. The complainant had believed that the information that was being withheld would show what considerations had been taken into account by DECC when formulating the noise policy guidance but, as outlined above, the content of the withheld information is more of a technical nature so the public interest in the disclosure of this is lessened.

57. The Commissioner does give weight to the argument that there is a public interest in the disclosure of any information which will allow the public to assess the quality of advice and decision making in government and to scrutinise the process by which guidance and policy is formulated.
58. Balanced against this, the Commissioner has considered the 'chilling effect' and 'safe space' arguments presented by DECC. When considering these he stresses that these arguments will be somewhat diminished by the fact that at the time the request was made the final GPG had been published and the issue was therefore no longer 'live'.
59. The Commissioner acknowledges the 'safe space' argument and recognises that part of the reason for needing a safe space is to allow free and frank discussion; the need for a safe space exists regardless of any impact on the candour of debate. The Commissioner has therefore gone on to consider the safe space arguments relevant to this request.
60. The Information Tribunal in the *DfES*⁷ case found that ministers and officials were entitled to time and space to agree policies by exploring safe and radical options without the threat of media involvement or external scrutiny. Therefore, the need for a safe space to debate and reach decisions without external comment is a valid argument.
61. The Commissioner recognises the public interest in preserving a safe space in which issues can be put forward and discussed to allow for the development of guidance the establishment of a Government position on an issue. He accepts there is a public interest in maintaining a safe space to allow officials to provide views and debate issues which may influence the development of policy and that this could be extended to the development of guidance where that guidance is endorsed by government and is intended to provide an official stance.
62. That being said, the specific content of the information contained in the emails relates to comments on a technical document rather than discussions and debates on a particular policy issue. As such he is not minded to accept there would be an erosion of the 'safe space' as a result of the disclosure of this information.
63. DECC has also suggested there may be a 'chilling effect' as a result of disclosure due to a loss of frankness and candour in advice.

⁷ Information Tribunal reference EA/2006/0006

64. As with the regulation 12(4)(d) exception, the Commissioner is of the view that as the GPG had been published at the time of the request it would be difficult to argue there would be any impact on the frankness and candour with which parties would contribute to discussions on the GPG.
65. However, DECC has consulted with officials involved in the process who have stated they would have responded differently, by being more guarded in their comments, if they had considered disclosure of their correspondence was a likely possibility. The Commissioner does accept that DECC has successfully argued there may be a chilling effect on the frankness and candour of advice if the information were disclosed and these officials were asked to contribute again in the future. The Commissioner also considers the likelihood of these officials being involved in future production of guidance or advice on this subject to be reasonably high due to the technical nature of the issue.
66. As such, the Commissioner considers the 'chilling effect' argument to be strong in this case as more guarded and less frank contributions are likely to impact on the quality of decisions which would not be in the public interest.
67. The Commissioner has balanced the arguments for maintaining the exception against the arguments in favour of disclosure. He considers that the arguments in favour of disclosure are broadly similar to those provided in relation to the regulation 12(4)(d) exception and he did not find these to be particularly strong. However, whilst the Commissioner was of the view that the arguments were finely balanced with regards to that exception, in this case he has accepted there is a likely chilling effect on future advice. As such he considers the balance of the public interest in relation to maintaining this exception is more heavily weighted than that in favour of disclosing this information.
68. The Commissioner therefore concludes that DECC has correctly applied this exception to withhold the emails and their attached/embedded documents which are internal communications.

Aggregated public interest test

69. Further to the ruling from the European Court of Justice, in the case of Office of Communications (Ofcom) v the Information Commissioner (C-71/10) , for the information which engages both 12(4)(d) and 12(4)(e) the Commissioner has gone on to consider whether the aggregated public interest in disclosing the information outweighs the public interest in maintaining the exception.

70. Whilst the Commissioner does not intend to repeat all the public interest arguments here, he has concluded that, for the information which engages both exceptions, the public interest in disclosure does not outweigh the public interest in maintaining the exceptions. This is because the arguments in favour of disclosure are the same arguments for both exceptions and whilst finely balanced in the case of the regulation 12(4)(d) exception, the strength of the arguments against disclosure in regard to the regulation 12(4)(e) exception outweighs this.

Regulation 12(3) – personal data

71. DECC has redacted names and contact information from the emails and documents already disclosed as it considers it to be the personal data of individuals other than the requester. In addition to this, DECC has withheld the entirety of the one remaining (from ten) submissions from the public about the GPG.
72. Regulation 12(3) and 13 provide an exception for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

Information redacted from documents already disclosed

73. The Commissioner has first considered whether this information constitutes personal data. Personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as:

“personal data’ means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

74. DECC redacted information from emails and the other submissions, the remainder of the content of which were disclosed to the complainant. An individual is identifiable in relation to each of these redactions, either as they are the sender or recipient of correspondence or due to what is stated within the redacted correspondence. The Commissioner accepts therefore that this information is personal data in accordance with the definition in the DPA.
75. Turning to whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has focussed here on the first principle, which requires that personal data be processed fairly and lawfully, and particularly whether disclosure would

in general be fair. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure on the data subject and whether there is a legitimate public interest in the disclosure of this information.

76. The Commissioner is of the view that the data subjects would hold an expectation that this information would be disclosed. The emails record the views and advice of members of the government oversight group and submissions from members of the public about the IoA GPG. DECC has released some names of individuals where they were senior Government officials and some third parties outside of Government where consent was provided but has redacted all other names and identities.
77. The Commissioner has considered his own guidance on the disclosure of personal data of public sector employees⁸ which suggests that it is likely that the information of more junior members of staff would be more likely to be withheld but it is necessary to consider the nature of the information and the responsibilities of the employees in question. In this case the information in the emails which has been disclosed is at times administrative and is not discussing major decisions or providing advice. The individuals would therefore have had little expectation their personal data would be disclosed as they were not involved with high level discussions or involved in major decisions on the issue.
78. In terms of any consequences of disclosure on the data subjects; the Commissioner considers that disclosure counter to the expectation of privacy may be distressing to the individuals but this is not a strong possibility. However, as the data subjects would have little reasonable expectation their information would be disclosed the Commissioner must consider the possibility of distress, no matter how remote.
79. As well as this the Commissioner has considered the legitimate public interest in the public knowing this information. The Commissioner does not consider there is any public interest in the release of this information as it is not relevant to the issue and would not provide any insight into the situation or contribute towards any debate on the matter. The

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

Commissioner acknowledges that usually disclosure of information will increase transparency and accountability.

80. In making his decision the Commissioner has considered whether disclosure of the information would lead to a greater infringement of the individual's legitimate right to privacy than is outweighed by the legitimate interest in disclosure. The Commissioner has not been convinced there is any legitimate public interest in disclosure of the names and contact information of individuals in this case beyond simply increasing transparency within the public authority. Balanced against this, the Commissioner does consider the individuals had no reasonable expectations about disclosure and may consider it to be distressing to have their information disclosed.
81. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, regulation 12(3) is engaged and the information is therefore exempt from disclosure.

The submission from a member of the public on the IoA GPG

82. DECC has also withheld the entirety of the correspondence from a member of the public expressing his views on the ETSU-R-97 guidelines on wind farm noise and the IoAs upcoming (at the time of the submission) GPG on this.
83. Following the same steps as when considering the redactions made from the other correspondence; the Commissioner has first considered whether this information would be personal data as defined by the DPA.
84. The information in the submission consists of a series of letters from the data subject on the subject of the ETSU-R-97 guidelines and the proposed GPG, setting out his opinion on the matter. As well as this, there are also letters from DECC and the data subjects MP.
85. In the majority of these documents the data subject is clearly identifiable both by name and by reference to the contents of the correspondence. In one document which is an attachment to an email, the content is primarily factual but the Commissioner accepts this is the opinion of the data subject and therefore it is possible he could be identified from this opinion. As such the Commissioner accepts the content of these submissions is the personal data of an individual other than the requester.
86. The Commissioner is of the view that the data subject would have no reasonable expectation that this information would be disclosed as it was submitted with a view to being provided to a government department to contribute to the consideration of the GPG.

87. DECC did approach the data subject to seek consent for disclosure but received no reply. As consent was not provided the Commissioner considers this supports the fact that the data subject would have no reasonable expectation of disclosure and there is a likely consequence of disclosure; there is a possibility of distress by having an opinion placed into the wider public domain when there was no expectation of this at the time it was submitted.
88. The Commissioner does acknowledge there may be some legitimate public interest in the release of this information as it contains the detailed opinion of an individual and it would allow for increased scrutiny of whether these concerns were then reflected in the final GPG.
89. That being said, the disclosure of the data subjects opinion on this subject may, if he is identified from this opinion, put him under undue scrutiny and lead to a greater infringement of his legitimate right to privacy than is outweighed by the legitimate interest in disclosure.
90. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, regulation 12(3) is engaged and the information is therefore exempt from disclosure.

Conclusion

91. The Commissioner has found the regulation 12(4)(d) exception to be engaged and the public interest to favour disclosure in relation to the emails. For those emails which are not subject to the regulation 12(4)(e) exception as well, the Commissioner now requires DECC to disclose this information with appropriate redactions under regulation 12(3) to remove the names and contact information of junior officials in line with the redactions already made in the disclosed information.
92. The remaining emails which do engage regulation 12(4)(e) have been correctly withheld as the public interest favours withholding this information. The Commissioner also accepts that regulation 12(3) has been correctly applied to withhold personal information from the information already disclosed and to withhold the remaining submission from a member of the public.

Right of appeal

93. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

94. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
95. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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