

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 5 January 2023

Public Authority: Office of Gas and Electricity Markets (Ofgem)
Address: South Colonnade
Canary Wharf
London E14 4PU

Decision

1. The Commissioner's decision is that, on the balance of probabilities, Ofgem does not hold any further recorded information within scope of the complainant's requests about how energy companies spend money raised by standing charges. He does not require Ofgem to take any steps.

Request and response

2. Based on its correspondence with the complainant, in further correspondence to them of 8 December 2022, Ofgem summarised the complainant's requests as being the following:
 - "1. How does Ofgem determine that energy companies are spending the money raised by. Standing charges on infrastructure, that is the purpose for which the money is raised?
 2. How can I tell and how can Ofgem tell in concrete and explicit terms that this money is spent on infrastructure and maintenance and is not spent on dividends?"
3. In response to correspondence from the complainant on 30 August 2022, a request submitted on 13 September 2022 and their request for

a review on 10 October 2022, Ofgem's final position in the 8 December 2022 correspondence was that it had addressed the complainant's requests as fully as it could and that it did not hold any additional recorded information within scope of the requests.

Reasons for decision

4. This reasoning covers whether, on the balance of probabilities, Ofgem holds recorded information within scope of the complainant's requests.
5. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information an applicant has requested and (b) communicate the information if it is held and is not exempt information. A public authority has similar obligations under regulation 5(1) of the EIR.
6. In its 8 December 2022 correspondence Ofgem noted that it had initially focused its response to the complainant's requests in the context of energy suppliers. This was because in their initial correspondence with Ofgem the complainant had made reference to, for example, standing charges imposed by suppliers, Shell Energy (a supply company) and "income arising from the sale of gas and electricity". Ofgem explained that subject to complying with relevant laws and its licence conditions (including the default tariff cap) it is for each energy supplier to determine how to price its tariffs and how to spend its income.
7. Ofgem went on to say that, to help the complainant, it had subsequently investigated this matter further. It provided further information on how the standing charge relates more broadly to energy network infrastructure, rather than through the "lens" of an energy supplier only. Ofgem acknowledged that one way to interpret the requests is as relating to investment in energy infrastructure by a wider set of market participants than energy supply companies (for example, energy network companies). Ofgem provided the complainant with detailed, narrative information about that matter. It concluded by addressing the complainant's two specific questions at paragraph 2 of this notice.
8. In a submission to the Commissioner Ofgem said that it has considered the requests further as a result of the complaint to him. Ofgem confirmed that it remains of the view that, in light of the additional information that it had provided to the complainant on 8 December 2022, taken together with its previous responses to the complainant dated 7 October 2022 and 1 November 2022, it has answered and complied with their requests.

9. In particular, Ofgem notes, in its 8 December 2022 correspondence to the complainant it has directly answered their two questions. Ofgem has also noted the complainant's references to energy companies' particular financial reports and accounts. It has advised that these are publicly available records which the complainant is able to access through the Companies House website (as it had explained to the complainant). Ofgem says that, in relation to this published information, the complainant would be able to seek independent advice if they were unclear on any aspect of those accounts; energy company accounts are not a matter for which Ofgem as regulator is responsible, and Ofgem had explained this to the complainant in responding to their requests.

The Commissioner's conclusion

10. FOIA and the EIR concern recorded information only. Neither piece of legislation obliges a public authority to answer general queries or questions, provide explanations or to give opinions.
11. The complainant may consider that Ofgem has not answered their questions. However, in the Commissioner's view Ofgem has thoroughly considered the complainant's questions and requests and has provided them with as much relevant information as it reasonably could. It has also addressed the two requests at paragraph 2. Ofgem has indicated that it does not hold specific recorded information within scope of the requests as framed and the Commissioner has not seen evidence to suggest that is not the case. On the balance of probabilities, therefore, the Commissioner finds that Ofgem has fully addressed the complainant's requests and has complied with section 1(1) of FOIA. To the extent that the requested information could be categorised as environmental information, the Commissioner also finds that Ofgem has complied with regulation 5(1) of the EIR.

Right of appeal

12. 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: 0870 739 5836

Email: grc@justice.gov.uk

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

13. 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.
14. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF