

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 January 2023

**Public Authority:** Office of Gas and Electricity Markets (Ofgem)  
**Address:** 10 South Colonnade  
Canary Wharf  
London  
E14 4PU

#### **Decision (including any steps ordered)**

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1. The complainant has requested papers which support evidence provided in a specified ongoing case [part 1] and certain procedures in relation to legal matters [part 2]. Ofgem refused to disclose the information requested at part 1 under section 44(1)(a), section 41 and section 40(2) FOIA. It provided information in response to part 2 of the request.
2. The Commissioner's decision is that Ofgem has correctly applied section 44(1)(a) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 13 September 2022, the complainant wrote to Ofgem and requested information in the following terms:

"Copies of any papers which support the evidence provided by [named individual] [redacted] whilst in the Witness Box and "under-oath" in Stornoway Sheriff Court earlier this year in regard to the ongoing case [redacted]. [part 1]

Also under the provisions of the abovementioned Act: What procedures does Ofgem have in place in the event that one of its employees were to perjure her/himself in any ongoing legal matters and does any such procedure include the automatic instigation of a formal investigation into possible financial transactions between that employee and the benefactor of her/his perjury? [part 2]"

5. Ofgem responded on 12 October 2022. It refused to disclose the information requested at part 1 under section 41 FOIA (information provided in confidence). It provided information in relation to part 2 of the request.
6. Following an internal review Ofgem wrote to the complainant on 3 November 2022. It upheld its application of section 41 FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 November 2022 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, Ofgem additionally applied section 44(1)(a) FOIA (statutory bar) to the withheld information. It also said that the withheld information contained third party personal data which it also considered to be exempt.
9. The Commissioner has considered whether Ofgem was correct to withhold the information requested at part 1 of the request under section 44(1)(a), section 41 and/or section 40(2) (third party personal data) FOIA.

### **Reasons for decision**

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#### **Section 44 prohibitions on disclosure**

10. Section 44(1)(a) of the FOIA states that:

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,”
11. Ofgem considered that disclosure is prohibited by virtue of section 105(1) of the Utilities Act 2000 (the Act) which states:

“105 General restrictions on disclosure of information.

(1) Information which—

(a) has been obtained under or by virtue of the provisions of this Act, Part I of the 1986 Act or Part I of the 1989 Act; and

(b) relates to the affairs of any individual or to any particular business, shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below.”

12. Paragraphs (2) to (8) inclusive of section 105 Utilities Act 2000 then provide a number of exceptions to the prohibition arising under (1) including consent of the individual or person for the time being carrying on the business.
13. Ofgem argued that section 105(1) applied because the withheld information was received by Ofgem under or by virtue of Part 1 of the Gas Act 1986 for the purposes of section 105 Utilities Act 2000.
14. It has also confirmed that it contacted the relevant third party to determine their desire to uphold the confidentiality of these documents. Ofgem was informed that it was still the third party's intention that the withheld information should be treated as confidential by Ofgem. Ofgem has not said that any of the other exceptions would apply either.
15. Based upon Ofgem's submissions the Commissioner considers that there is statutory bar to disclosure of the withheld information and therefore section 44(1)(a) FOIA would apply in this case.
16. As section 44(1)(a) FOIA is applicable in this case, the Commissioner has not considered the application of section 41 or section 40(2) FOIA any further.

## **Right of appeal**

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17. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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.....**

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**