

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

### **Decision notice**

**Date:** 21 September 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 correspondence with the government regarding catastrophic data loss. The above public authority ("the public authority") denied holding any information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold any further information within the scope of the request.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 3 March 2023 the complainant requested information of the following description:

"Please provide sight of all records from 2017 onwards related to Ofgem's notification, discussion, or other communications to government of:

- Catastrophic data losses within energy company billing systems and their impact on customer billing, to include cross-contamination of reconstituted customer billing records."

5. On 31 March 2023, the public authority responded. It denied that it had opened an enforcement case, relating to the loss of data, since 2017 and therefore, by implication, it held no information. It upheld this position following an internal review.

## Reasons for decision

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6. Where there is a dispute over the amount of information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority has provided all the information it holds. He is not required to prove beyond doubt that information is, or is not, held.
7. The Commissioner also notes that his investigation is limited to determining whether information is held as a matter of fact. Not whether it ought to be held.

## The complainant's position

8. The complainant explained to the Commissioner that he was investigating a fraud that had come about as a result of a catastrophic corruption of data which, he alleged, had taken place at a particular energy company ("the Company"). He argued that the Company was required by law to report such matters to the public authority (as the regulator) and that the public authority, in turn, had a duty to report such matters to the government.
9. If the Company had failed to report this matter to the public authority, or the public authority had failed to pass the information on to the government, that would be a "very big scandal."
10. The complainant also drew the Commissioner's attention to a request he had submitted in 2020 ("the 2020 request"), in which he had asked the public authority to provide:

"communications with the Energy Ombudsman or [the Company] (or its contractors) related to [the Company] customer records / billing systems failures since 2017.

"Please provide sight of any assessments or reports on the impact and volume of the failures, remedies, and any recommendations made by Ofgem, the Energy Ombudsman, and [the Company] (or its contractors)."

11. In response to this request, the public authority had confirmed that it held some information. It directed the complainant's attention to a small quantity of information in the public domain but relied on section 44 of FOIA (statutory prohibition on disclosure) to withhold the remaining information.
12. The complainant argued that, if the public authority held information about conversations with the Company relating to billings system or customer records failures in 2020, it would have needed to have reported those matters to the government. It would be, he argued, a serious matter if the public authority had been aware of a major issue but failed to report it to the government.

### **The public authority's position**

13. The Commissioner put the point about the 2020 request directly to the public authority to ask it to explain the apparent discrepancy in the two responses.
14. The public authority explained that, in light of the present request, it may have mis-interpreted the 2020 request. It had originally interpreted the reference to "customer records/billings systems failures" as only being information about established breaches of the Company's licence conditions or other legal obligations. At the review stage, it had interpreted the request more broadly to include circumstances where no formal breach had been determined and so had directed the complainant to information about compliance work it had done around fees that the Company had wrongly charged customers.
15. The public authority argued that the word "failures" could encompass a broad range of issues, whereas the phrase "catastrophic data loss" would relate to a very specific set of circumstances. There was thus no contradiction in accepting that it held information relating to "failures" but not to "catastrophic data losses." The latter would have almost certainly resulted in the creation of a compliance case – which it had already confirmed had not happened.
16. The public authority accepted that it was possible that it might (at least in theory) have held some information within the scope of the request even if no compliance case had been opened. It explained that it had searched its records for both compliance cases and instances where concerns had been raised but no formal case opened. It had also consulted with several members of staff who would have been in a position to know if relevant information was held. No relevant information had been unearthed.

### **The Commissioner's view**

17. In the Commissioner's view, the public authority has put forward a reasonable explanation as to why it does not hold the requested information.
18. Having looked at the wording of the 2020 request, the Commissioner is bound to accept that it is broader in scope than the request that is the subject of this notice (as well as not directly covering correspondence the public authority exchanged with the government). Having looked at the information in the public domain that was highlighted in response to the 2020 request, the Commissioner accepts that this would fall within scope – even though it would not be relevant to the present request. The Commissioner has not seen the information that the public authority relied on section 44 of FOIA to withhold but infers that it relates to similar matters.
19. The complainant was sceptical about the public authority's post-event justification for its response to the 2020 request. He argued that the Commissioner should ask for further clarification about the discussions the public authority had had with the Company and about the information it had previously withheld.
20. The Commissioner declined to follow this line of inquiry for three reasons. Firstly, the complaint he has accepted was that the present request had not been dealt with in accordance with FOIA. If the complainant had concerns about the way the 2020 request was dealt with, it was open to him to bring a complaint in 2020 – although in fairness the Commissioner notes that, given that the complainant appears to have accepted that the section 44 would have applied to any information the public authority did hold in 2020, he would have been unaware of whether that information was or was not what he had actually been seeking.
21. Secondly the Commissioner recognises that any information the public authority did hold regarding discussions would equally be prohibited from disclosure by the Utilities Act 2000. Furthermore, in merely confirming or denying that it held such information, the public authority would be revealing something about the nature of the discussions it had had with the company. Therefore there was a strong likelihood that, even if the public authority were to divulge the true position to the Commissioner, he would be unable to refer to it in a published decision.
22. Finally, the Commissioner notes that, even if the public authority were to confirm that such discussions had taken place with **the Company** (if indeed they had), he is not persuaded that this would make it any more or any less likely that the public authority had had correspondence with **the Government** – which is what the present request seeks. Therefore he is not satisfied that the clarification the complainant seeks is

information that he could reasonably require the public authority to provide for the purpose of investigating the present complaint.

23. The Commissioner is satisfied that the public authority has provided reasonable explanations as to why it does not hold the requested information and that it has carried out appropriate searches to support its stance.
24. The Commissioner also notes that the Department for Energy Security and Net Zero has also denied that either it, or its predecessor the Department for Business, Energy and Industrial Strategy, had had correspondence with the public authority about this matter.
25. Finally, the Commissioner would note that, whilst he has not been presented with evidence demonstrating that information is being withheld either from the public authority by the Company, or by the public authority from the Government, if the complainant were correct that either of these scenarios had happened, it would, ironically, reinforce the public authority's stance that it holds no correspondence with the Government.
26. On the balance of probabilities, the Commissioner is satisfied that the public authority holds no information within the scope of the request.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**