

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2024

Public Authority: Ofgem
Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested information about an application for an Independent Distribution Network Operator's Licence (IDNO). Ofgem refused the request, citing section 44(1) (prohibitions on disclosure).
2. The Commissioner's decision is that Ofgem was correct to refuse the request under section 44(1).
3. The Commissioner does not require further steps.

Request and response

4. On 31 December 2023, the complainant wrote to Ofgem and requested the following information:

"I am writing under the Freedom of Information Act to request the following information in relation to the application for an Independent Distribution Network Operator's Licence (IDNO) by Green Generation Energy Networks Cymru Ltd. (Green Gen Cymru.)

1. External correspondence, meeting minutes or notes of discussions received by Ofgem relating to the above application. Correspondence could be from (but not limited to) Green Gen Cymru, Welsh Government, National Grid (or associated companies) PEDW or other official stakeholders.

2. Ofgem responses to the above.
3. Internal correspondence, emails, meeting minutes or notes relating to the above application.
4. Specifically, (but not limited to) any internal or external documentation, as above, relating to the timescale for deciding this application, bearing in mind that Green Gen Cymru has let it be known that it was expecting a decision in Q3 of 2023. Please take the above request to relate to both paper and digital format documentation.”
5. Ofgem responded on 24 January 2024, refusing the request under section 44(1).
6. Following an internal review Ofgem wrote to the complainant on 21 February 2024. It upheld its previous position.

Scope of the case

7. The complainant contacted the Commissioner on 18 March 2024, to complain about the way their request for information had been handled.
8. The complainant is concerned that there’s an overwhelming public interest in disclosure of the requested information.

Reasons for decision

Section 44 – prohibitions on disclosure

9. Section 44(1)(a) states that information is exempt from disclosure under FOIA if its disclosure is prohibited by or under any enactment.
10. Section 44 is an absolute exemption, which means that, if information is covered by any of its subsections, it is exempt from disclosure. It’s not subject to the public interest test.
11. In its response to the request, Ofgem advised the complainant that section 105(1) of the Utilities Act 2000 prohibited it from disclosing the information that’s being requested.
12. Section 105(1) of the Utilities Act 2000 states that information which has been obtained under or by virtue of the provisions of Part 1 of the Electricity Act 1989, and relates to the affairs of any individual or any particular business, shall not be disclosed during the lifetime of the individual or so long as the business continues. It’s clear from the request that the matter to which the request relates is ongoing.

13. Ofgem is Great Britain's independent energy regulator and was formed under the Utilities Act. It has statutory functions that it must carry out under both the Utilities Act and the Electricity Act and, on this occasion, it is prohibited by this legislation from disclosing the requested information under FOIA.
14. The Utilities Act 2000 provides gateways for lawful disclosure, but the Commissioner doesn't consider that any of these gateways have been met. In any case, these gateways provide a discretionary power to disclose, not a duty to disclose and Ofgem has chosen not to disclose the information. It is not the Commissioner's role in such a scenario to question that decision.
15. The Commissioner's decision is that Ofgem has correctly withheld the requested information under section 44(1)(a), because another piece of legislation precludes it from being disclosed under FOIA.
16. This is in line with previous decisions¹ of the Commissioners, both of which upheld Ofgem's application of section 44(1)(a) in refusing requests for IDNO information.
17. The Commissioner is sympathetic to the complainant's circumstances, however, as section 44 is an absolute exemption there is no public interest to consider in this case.

¹ [ic-273494-x6z7.pdf \(ico.org.uk\)](#); [ic-255419-n3j5.pdf \(ico.org.uk\)](#)

Right of appeal

18. 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

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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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