

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2023

Public Authority: Department for Energy Security and Net Zero¹

Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant requested information relating to Shell's proposed relocation of its headquarters to the UK.
 2. The Department for Business, Energy and Industrial Strategy ("BEIS") provided some information in response to the request but refused to disclose the remainder on the basis of section 43(2) (commercial interests) of FOIA.
 3. The Commissioner's decision is that the information is exempt from disclosure on the basis of section 43(2) and that the public interest favours maintaining the exemption. In addition, on the balance of probabilities, BEIS held no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
 4. No steps are required.
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¹ On 7 February 2023, under a Machinery of Government Change, the Department for Business Energy and Industrial Strategy ("BEIS") began the transition into three separate departments, including the Department for Energy Security and Net Zero ("DESNZ"). The request in this case was made to BEIS, however this decision notice will be served on DESNZ as the appropriate authority albeit that the decision notice refers to BEIS throughout as it was the body that handled the request and with whom the Commissioner largely corresponded about this complaint. In August 2023 DESNZ provided submissions to the Commissioner and confirmed to the Commissioner that it was the appropriate authority to serve this decision notice on.

Background

5. The Commissioner understands from the Shell website that on 15 November 2021 Shell announced it was proposing to move its headquarters to the UK.² This also involved aligning Shell's tax residence with the UK.
6. On 10 December 2021, the shareholders of the company supported the proposal at a General Meeting. On 20 December 2021, Shell announced that its Board had decided to proceed with its proposal.
7. As a consequence, on 31 December 2021 Shell held its first Board meeting in the UK and the Company's name was changed from Royal Dutch Shell plc to Shell plc on 21 January 2022³.

Request and response

8. The complainant submitted the following request to BEIS on 15 November 2021:
 - "1) Details and copies of any formal correspondence between Kwasi Kwarteng MP [Secretary of State of BEIS at that time] and representatives of the company Shell which discuss or refer to the proposed relocation of the company's international headquarters to the UK.
 - 2) Details of, and readouts arising from, meetings with staff from Shell by ministers or senior management within BEIS, where the potential relocation of the company's international headquarters to the UK was discussed. Searches can be limited to the six months prior to the date of this request."
 9. BEIS responded on 10 December 2021. It explained that it held information in scope of the request and disclosed that a meeting took
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² <https://www.shell.com/investors/simplified-share-structure.html>

³ <https://www.shell.com/media/news-and-media-releases/2022/shell-announces-first-day-of-trading-of-single-line-of-ordinary-shares.html>

place between the Permanent Secretary of BEIS and representatives of Shell where the potential relocation of the company's international headquarters to the UK was discussed. However, the details of and readout from that meeting was withheld under section 43(2) of FOIA.

10. The complainant contacted BEIS on 10 January 2022 and asked it to conduct an internal review of this request.
11. BEIS informed the complainant of the outcome of the internal review on 8 February 2022. The review found that information falling within the scope of part 1 of the request was able to be disclosed without redaction to the complainant "now that the shareholder general meeting has occurred (as it did on 10 December 2021)". This consisted of an email received by the Secretary of State [Kwasi Kwarteng MP] from the Chairman of Shell on 15 November 2021. BEIS confirmed that the email was not responded to.
12. In relation to part 2 of the request, BEIS continued to rely on section 43(2) of FOIA to withhold the readout of the meeting of 29 October 2021 attended by the Permanent Secretary of BEIS and representatives of Shell.

Scope of the case

13. The complainant contacted the Commissioner on 8 March 2022 to complain about the way their request for information had been handled by BEIS.
14. The complainant said they were concerned that there could be further information within the scope of the request that had not been disclosed. As regards, the withheld readout from the meeting, they argued that BEIS had not fully taken into account the weight of the public interest in the requested information. The complainant also argued that partial disclosure of the withheld document(s) should be possible, as opposed to withholding the document(s) entirely.
15. On 23 January 2023, the Commissioner wrote to BEIS asking for a copy of the withheld information, as well as any additional supporting arguments, regarding the application of sections 1 and 43(2) to the request.
16. Despite several further chasers in February, March and April 2023 to BEIS, the withheld information and submissions remained outstanding.
17. The Commissioner notes that, due to the Machinery of Government Changes, he provided the authority with significant leeway in responding to the Commissioner. However, on 1 June 2023, the Commissioner

served an Information Notice on the Department for Business and Trade ("DBT"), who at that time the Commissioner considered to be the appropriate authority dealing with the complaint following the Machinery of Government Changes (this will be published separately on his website⁴). The Information Notice required DBT, within 30 calendar days, to furnish the Commissioner with a copy of any information being withheld and a substantive response to his letter of 23 January 2023.

18. On 10 August 2023, outside the time for compliance, the Department for Energy Security & Net Zero ("DESNZ") provided the withheld information and submissions to the Commissioner. DESNZ confirmed that it was the appropriate authority dealing with the complaint and the authority the Commissioner should serve this decision notice on (and should have served the Information Notice on). However, for ease, the decision notice refers to BEIS throughout as it was the body that handled the request and with whom the Commissioner largely corresponded about this complaint.
19. The Commissioner considers the scope of his investigation to be to determine if BEIS has complied with section 1(1) of FOIA, if the withheld information engages section 43(2) FOIA and, if so, whether the public interest lies in maintaining the exemption or in disclosure.

Reasons for decision

Section 43 – commercial interests

20. The information withheld from the complainant was done so on the basis of section 43(2) of FOIA. This states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'
21. The Commissioner's guidance 'Section 43 - Commercial interests'⁵ states that: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim

⁴ <https://ico.org.uk/action-weve-taken/information-notice/>

⁵ [Section 43 - Commercial interests | ICO](#)

will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.”

BEIS's position

22. BEIS explained that the information which was withheld in its entirety on the basis of this exemption was a readout of a meeting dated 29 October 2021 between BEIS Permanent Secretary (then Sarah Munby) and the Executive Vice President for Government Relations at Shell.
23. The Commissioner is mindful that he must not disclose any of the detail of the withheld information in this decision notice. During the course of his investigation, the Commissioner has had sight of the withheld information and considers that it can accurately be described as a single four paragraph email from the BEIS Permanent Secretary to individuals at HM Treasury, No. 10 and UK Government Investments reporting back on the meeting on 29 October 2021 with the Executive Vice President for Government Relations at Shell. The email's content relates to Shell's proposed relocation to the UK.
24. BEIS has highlighted to the Commissioner the harm that it envisages disclosure would be likely to cause as follows.
25. The Commissioner notes that the email dated 29 October 2021 refers to a discussion about the process, timing and communication of Shell's proposed relocation to the UK. BEIS explained to the Commissioner that, at the time of the request on 15 November 2021, "the proposed move had just been announced and was still being confirmed by the company board." BEIS also said that, "The sharing of information in government on the topic was being done on a highly restricted basis given the potentially market moving nature of the information, as evidenced by the classification of the email ('Commercial in Confidence – Market Sensitive')."
26. At the time of the request, therefore, BEIS explained that "the nature of the considerations in planning for the relocation were and remain commercially confidential for Shell". BEIS said this information was not publicly known, and if released, would cause significant harm to the company's decision making on whether to relocate to the UK. In addition, BEIS argued that release of the information could significantly damage both the company's commercial reputation and financial standing. BEIS explained that, "The commercial confidentiality is therefore protecting the legitimate economic interest of the company."
27. As regards Shell's competitors, BEIS said "this would also provide them with an advantage as they would have additional commercial information about Shell."

28. In addition, BEIS also argued that Shell had a legitimate commercial interest "in not wanting public speculation over the reasons for their relocation."
29. BEIS also stressed to the Commissioner that disclosure would damage the future beneficial potential of government relationships with Shell as they would be less willing to share commercially sensitive information with government and engage in such relationships. BEIS said: "The Government treats information with the appropriate care and will seek to ensure that Shell do not suffer unnecessary damage to their wider commercial interests and opportunities."
30. BEIS provided the Commissioner with some additional submissions which referenced the content of the withheld information which are not referred to in this decision notice.

The complainant's position

31. The complainant argued that BEIS had failed to demonstrate that disclosure would be likely to prejudice Shell's or BEIS's own commercial interests. The complainant's view was the arguments cited by BEIS were generic in nature and not specific to the particular information requested.
32. In addition, the complainant said that there is a very specific and highly relevant wider context to this request which has been overlooked and goes beyond a general interest in the government's interactions with private companies (this is discussed further below).

The Commissioner's position

33. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance;
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a

hypothetical possibility; rather there must be a real and significant risk.

With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

34. With regard to the first criterion of the three limb test described above, the Commissioner is satisfied that, in the context of this request, the information does relate to a commercial interest. Revealing commercially sensitive information about Shell to its competitors or partners would undermine the company's ability to compete effectively in a global market. Therefore, the Commissioner is satisfied that the arguments presented by BEIS outline how disclosure would prejudice the applicable interests within the relevant exemption.
35. With regard to the second criteria the Commissioner must now consider if there is a causal link between the information that is being withheld and the prejudice that section 43(2) is designed to protect.
36. The Commissioner is satisfied that disclosure of the information has the potential to harm the commercial interests of Shell. The release of this information into the public domain at the time of the request, in the Commissioner's view, would be prejudicial to its commercial interests. This is because, having reviewed the withheld information, it is clear that it contains confidential information about Shell's current and potential business operations. The Commissioner also accepts that disclosure of the information at the time of the request would affect the market prices of Shell's shares and other financial instruments. If handled incorrectly, the information may also lead to disorderly markets. This would damage the integrity of the UK market, as well as creating the potential for market abuse. It would also damage Shell's commercial interests and ability to secure future investment, partnerships or customers by disclosure of information not intended for public scrutiny. The Commissioner therefore accepts that there is a more than hypothetical risk of prejudice occurring to the Shell's commercial interests and that the risk of it occurring is real. The second criterion is therefore met.
37. It is important to identify which threshold of prejudice is being relied upon when applying a qualified exemption such as section 43. This is the third criteria. The higher threshold, disclosure 'would' prejudice, will hold more weight when considering where the public interest lies than the lower threshold, disclosure 'would be likely' to prejudice. BEIS has confirmed it is relying on the higher threshold of prejudice in this instance; disclosure would harm Shell's commercial interests.
38. In this instance the Commissioner is satisfied that the three part test referred to above has been met. BEIS has been able to demonstrate a causal relationship between the disclosure of the requested information

and prejudice to Shell's commercial interests. He agrees that competitors and the market generally would find benefit from the information which in turn would result in prejudice to Shell's commercial interests. The Commissioner is also satisfied that there is a real and significant risk of the prejudice occurring, and that the chance of the prejudice occurring is more than 50%. The Commissioner also considers that the consequences of disclosure are not trivial or insignificant.

39. In reaching this conclusion the Commissioner has also taken into account the basis upon which this information was shared with BEIS. The Commissioner accepts that the information contained in the withheld information was clearly provided by Shell to BEIS on the basis that Shell would not want information, which they considered to be inherently commercially sensitive, to be made public. The Commissioner accepts that it follows that BEIS's reputation for being trusted with sensitive commercial and market sensitive information would also be harmed with the effect of reducing the open and frank sharing of information between businesses and the government.
40. The Commissioner notes that BEIS has based its arguments for relying on section 43 on the impact resulting from the effect of disclosure on Shell and their confidence in continuing to engage with the government. BEIS has not provided the Commissioner with a direct response or correspondence from Shell itself.
41. The Commissioner's well established guidance on section 43(2) is clear that where public authorities are contending that the disclosure of information which they hold would, or would be likely to prejudice a third party's commercial interests, the public authority must have evidence that this accurately reflects the third party's concerns. It is not sufficient for the public authority to simply speculate about the prejudice which might be caused to the third party's commercial interests; the public authority needs to consult them for their exact views in all but the most exceptional circumstances.
42. In this case the Commissioner recognises and appreciates that BEIS has a good idea of the commercial sensitivity of the withheld information from its interactions with Shell. Therefore, he is prepared to accept that BEIS on this occasion is able to provide an informed view of Shell's opinion because it would have been self-evidently prejudicial to disclose such information.

Public interest test

43. Section 43(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case

the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest in disclosing the withheld information

44. There is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. FOIA is a means of helping to meet that public interest.
45. BEIS acknowledged that, in favour of release of the information, there is a general public interest in the disclosure of information relating to how government interacts with companies so that decision making in this area is more open and accountable.
46. The complainant argued that there was a particularly weighty public interest in the disclosure of information that may inform the public, and the debate about the factors set out in the paragraph below.
47. The complainant's request for an internal review asked for the following public interest arguments to be addressed (note: the key points only are set out by the Commissioner in this decision notice, taken from a detailed five page letter):

1. Shell's corporation tax arrangements:

"There is a clear public interest in information which clarifies any new or existing tax arrangements between the UK government and Shell which may have the effect of limiting or reducing tax receipts to HMRC. UK taxpayers should be able to understand as fully as possible whether any such tax arrangements are in the public interest, both in relation to economic concerns and the UK's commitments on climate change and policy on 'net zero.' If any terms favourable to Shell have been agreed, then the public needs to understand the motivation for offering those terms and on what basis."

2. Shell's existing tax arrangements with the UK government:

"There is a significant public interest in (a) the existing tax arrangements in place with Shell and the extent to which they represent value for money for the taxpayer, (b) why the UK offers terms which are distinct from those offered by any other country and, as relates to this request, (c) how such arrangements might be extended, entrenched or altered as a consequence of the company's relocation to the UK. In the case of this request, it is not simply that there is an interest in how the UK Government interacts with fossil fuel companies and that the government should seek to be more accountable, it is that the requested information will shed light upon, and may be

integral to, the public's understanding of whether terms offered to Shell are in the best interests of the taxpayer."

3. Tax arrangements are 'a factor' in Shell's move to the UK:

"..there is a clear public interest in understanding whether any arrangements made with Shell that may pertain to taxation represent value for money to the UK taxpayer. The reporting by Reuters strongly suggests that a core motivation for Shell's relocation to the UK is, in part, in order to further take advantage of existing tax arrangements rather than a desire to contribute more significantly to the UK economy through taxation. Without greater transparency around the discussions that have taken place with Shell and any terms subsequently agreed relating to the relocation, the UK taxpayer is not in a position to accurately assess whether the relocation is in their best interests or represents value for money.... It is only with greater transparency around the government's interactions with Shell that the validity of Kwasi Kwarteng's claim can be assessed, whether the relocation is related to accelerating the transition to clean energy or simply due to a more favourable tax regime."

4. Shell's lobbying strategies:

"There is therefore a strong public interest in providing greater transparency around Shell's engagement with the UK government, particularly where that interaction has led to a significant shift – the relocation of Shell's HQ to the UK – and could inform approaches to policymaking in the future. Shell's relocation to the UK could also markedly redefine its relationship with the UK government and its potential to inform, lobby and influence policymaking on climate change."

5. Dutch Court ruling on Shell's inconsistency with Paris Agreement targets:

"There is therefore a strong public interest in understanding the extent to which these issues have been discussed with government representatives or departments and whether support or guidance has been provided to Shell in this area, and whether the UK government is aware of any legal implications of Shell's relocation in this regard."

6. Shell's inconsistency with target of 1.5C and emissions reduction pathways:

"There is therefore a strong public interest in understanding in detail the nature of any such discussions between those companies that are not genuinely committed to meeting the Paris

Agreement's targets and government departments, and whether any discussions that have taken place with Shell may have supported the relocation of a company to the UK whose business plans run counter to the government's own targets on emissions reduction."

48. The Commissioner has considered the complainant's arguments in the context of the specific information withheld in this case under section 43.
49. The complainant also argued that "blanket non-disclosure of information in response to my request also suggests that the document(s) in question have not been accurately assessed, as commercial sensitivity will likely vary throughout, rather than apply equally to its entire contents."

Public interest in maintaining the exemption

50. BEIS argued that there is a public interest in ensuring that the commercial interests of companies are not damaged or undermined by disclosure of information which is not common knowledge, and which could adversely impact on future business. It said, "the commercial sensitivities mean that on this occasion we consider that the public interest would not be served by its release."
51. BEIS's submissions to the Commissioner also advised that disclosure of the requested information "would be contrary to Shell's legitimate expectations of confidentiality and would be likely to damage the commercial interests of the company Shell." BEIS said: "The information in that readout is not already publicly known and if it were to be released, could significantly damage both the company's commercial reputation and financial standing."
52. BEIS argued that if this information was made public, it would be available to the Shell's competitors. This would provide them with an advantage as they would have additional commercial information about Shell.
53. BEIS's reputation for being trusted with sensitive commercial and market sensitive information was also an important argument against disclosure. BEIS explained to the Commissioner that "it is important that companies are able to share commercially sensitive information with Government in the confidence that that information will not then enter the public domain and damage their wider commercial interests and opportunities. BEIS went on to say that disclosure "would also damage the future beneficial potential of government relationships with Shell as they would be less willing to engage in such relationships."

54. BEIS also stated that the information in the withheld email is commercially sensitive throughout and so can't be disclosed in part as the complainant suggests.

Balance of the public interest test

55. The Commissioner agrees that there is a public interest in disclosing information which allows the public to understand how businesses communicate with government. This is because of the undoubted influence that these businesses can potentially have on the formulation and development of government policy. Furthermore, the Commissioner considers that such scrutiny can help to ensure that a particular relationship does not become unduly influential or dependent.
56. The Commissioner accepts that disclosure of the withheld information in this case would therefore provide a direct insight into the nature of discussions the government, at a very senior level, had with Shell about the proposed relocation. (He does, however, note that as BEIS disclosed the requested information in relation to request one at the internal review stage, only very limited information (one email) has been withheld from the complainant.)
57. The Commissioner also acknowledges that there is a specific public interest in information about the transition to net-zero and the important role which energy companies play in that transition. Shell advised the Secretary of State that its relocation will "facilitate Shell's transition to a net-zero energy company." Against this, the Commissioner notes that BEIS acknowledged in its submissions that nevertheless there was speculation in the media over Shell's actual reasons for its relocation to the UK.
58. However, despite the insight provided by disclosure of the withheld information, the Commissioner does not consider that disclosure of the specific withheld information at issue in this case would serve the public interest identified by the complainant at paragraph 47 above.
59. The Commissioner has had regard to the specific content of the withheld information in this case, and he appreciates that the complainant cannot have sight of it in order to make submissions. The Commissioner considers that the withheld information does not contain any detail about Shell's tax arrangements and whether those terms are in the best interests of the UK taxpayer. Nor does it contain any substantive information about Shell's lobbying strategies, the Dutch court ruling or the target set out in the Paris Climate Agreement. It is largely focused on the process, timing and communication of Shell's proposed relocation to the UK. For this reason, the Commissioner finds that its disclosure would not inform the public to any significant degree regarding the issues identified by the complainant as being of public interest.

60. The Commissioner considers that the public interest weight and value of the withheld information is outweighed by the stronger and wider public interest in the commercial sensitivities of the information. The complainant's eagerness to find out more about BEIS's involvement in Shell's relocation to the UK does not outweigh the need to protect Shell's commercial interests. In addition, the information contained in the withheld information was not, at the time of the request, already in the public domain (and to the best of the Commissioner's knowledge, has never been made public).
61. The Commissioner considers there to be clear public interest in ensuring that the commercial interests of private companies are not harmed, that fairness of competition is not undermined and damage to the integrity of the UK market is avoided. Disclosure of the information in question would therefore be against the public interest as it would harm Shell. The Commissioner considers that the risk of prejudice, and the consequences of disclosure, outweigh the potential benefits to the public.
62. More broadly, the Commissioner agrees that it would be firmly against the public interest for such companies to lose confidence in BEIS as a trusted partner, and one which could through the confidential exchange of information, help and support business. The failure to protect commercially sensitive information would limit the UK Government's ability to promote the British economy in the future as release would be regarded as a breach of trust by Shell and could have a significant impact upon BEIS's relationship with Shell or other companies in the future. International organisations must feel confident that they can share sensitive information as part of engagement with the UK government.
63. In support of his view, the Commissioner notes that BEIS has already advised the complainant on 8 February 2022 in its internal review response that the withheld information does not relate to the subject matter or specific public interest arguments the complainant set out in his internal review request. BEIS said:

“Your arguments also relied heavily on the tax arrangements of Shell, and whether those terms are in the best interests of the UK taxpayer. After looking at the readout it can be confirmed tax was not discussed, however [BEIS] wishes to reiterate that we do not comment on Shell's company tax liability as this is the responsibility of HM Treasury to discuss with Shell.”
64. The Commissioner is aware that the complainant made a similar request to HM Treasury. The withheld information in that case is correspondence between Shell and the Treasury and also internal Treasury correspondence, about Shell. The withheld information contains candid

assessments of the risks of Shell's restructure. The Commissioner's decision in that case is also that the withheld information engaged section 43(2) and the public interest lies in maintaining the exemption⁶.

65. As regards the complainant's arguments that some of the withheld information could be disclosed in redacted form, having seen the withheld email in question, the Commissioner's view is that the entire contents can be withheld.
66. Taking the above into account the Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 43(2) of FOIA.

Section 1 – information not held

67. The complainant advised the Commissioner that they were concerned that there could be further information within the scope of the request that had not been disclosed.
68. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
69. FOIA concerns recorded information only. It does not require a public authority to answer general questions, provide opinions or explanations, generate answers to questions, or create or obtain information it does not hold. The information must already be held at the point a request is made.
70. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024580/ico-172913-s4d1.pdf>. Information Tribunal appeal EA/2023/0196 under appeal.

71. The Commissioner asked BEIS to provide a full explanation of its response for the requested information, and how it had concluded that all information in scope of the request and held by BEIS had been identified. The Commissioner also asked BEIS to provide details of the searches it carried out for information falling within the scope of the request. His remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held at the date of the request.
72. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and other explanations offered by BEIS as to why no further information is held. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held).
73. The complainant's request in question one was for any formal correspondence between Kwasi Kwarteng MP and representatives of the Shell about the proposed relocation of Shell's international headquarters to the UK. The complainant's request in question two was for readouts of meetings with staff from Shell by ministers or senior management within BEIS.
74. The complainant's reasons, as set out in his correspondence with the Commissioner, for believing that BEIS hold further information which has not been disclosed to them, appear to be because the internal review released an email not previously disclosed and they were "concerned that there could be further information within the scope of my request that has also not been disclosed."
75. BEIS has explained to the Commissioner in response to his questions that it conducted searches for information within the records of the International Energy Unit (as the most relevant policy area of the department); the Private Office of the Secretary of State, Kwasi Kwarteng MP; and the office of the Permanent Secretary. No relevant information was found by the International Energy Unit. The Secretary of State's office located the email from the Chairman of Shell UK dated 15 November 2021 which was initially withheld in accordance with section 43(2) but later released at the internal review. They also confirmed that the Secretary of State had not had any meetings with Shell where the relocation of the company's headquarters had been discussed. The then Permanent Secretary's office confirmed that a telephone meeting took place between the Permanent Secretary and representatives of Shell where the potential relocation of the company's international headquarters to the UK was discussed. They located an email of a readout of that meeting dated 29 October 2021 which was withheld under section 43(2).

76. BEIS is of the view that it does not hold any further information requested other than that already disclosed to the complainant or withheld under section 43(2).
77. The Commissioner has carefully considered the points made by the complainant and BEIS.
78. Having reviewed the submissions of both parties, the Commissioner is not persuaded that BEIS is likely to hold further information. The Commissioner is satisfied that adequate searches were carried out by BEIS at the time to determine whether recorded information within scope of the request was held. Furthermore, the Commission is satisfied that appropriate consultations took place with BEIS staff and that should information within scope of the request have been held, those staff who were consulted would have been aware of such information.
79. The Commissioner therefore accepts that BEIS's conclusion that it does not hold any further information falling within the scope of the request is a reasonable one in the circumstances.
80. The Commissioner is aware that the complainant considers that BEIS *should* have been able to provide them with more information. However, whilst the Commissioner recognises that the complainant does not consider that BEIS has fulfilled the request, that appears to be conjecture by the complainant rather than known facts. Whilst the Commissioner understands why the complainant would consider that such information was held, he notes BEIS's reasons above for why no further information is not held. No evidence is available to the Commissioner which would indicate that BEIS holds more recorded information falling within the scope of the request.
81. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts BEIS's position that it does not hold any further recorded information falling within the scope of the request beyond that previously identified. As such, the Commissioner has decided that BEIS has complied with section 1(1)(a) of FOIA.

Procedural requirements

Section 1: general right of access **Section 10(1): time for compliance**

82. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.

83. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
84. The Commissioner considers that the 15 November 2021 email could have been disclosed to the complainant with the original response on 10 December 2021 - because the shareholder general meeting occurred that day. BEIS did not disclose this information to the complainant until the internal review stage and this was well outside the 20 day time for compliance. The Commissioner commends BEIS for reconsidering the request, but it follows that BEIS failed to comply with sections 1(1)(b) and 10(1) in respect of this information.

Information Notice

85. Following the Machinery of Government changes, the Commissioner issued the Information Notice to DBT but as explained above, DESNZ has now answered this complaint. An annotation will be added to the website version of the Information Notice to explain that it subsequently transpired that DESNZ was the correct authority and that the Information Notice should have been served on DESNZ.

Right of appeal

86. 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

87. 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.

88. 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

Jonathan Slee
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