

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

Date: 20 December 2023

Public Authority: UK Export Finance
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant submitted a request to UK Export Finance (UKEF) for a copy of the contract that was signed by Wood Group for the government-backed Green Transition Loan it received in 2021. UKEF confirmed that it held a copy of the contract and initially withheld it in full on the basis of regulations 12(5)(e) (commercial or industrial information) and 13 (personal data) of the EIR. It disclosed a redacted version of the contract during the course of the Commissioner's investigation, again relying on the same two exceptions. The complainant disputed the application of regulation 12(5)(e).
2. The Commissioner's decision is that the parts of the contract redacted on the basis of regulation 12(5)(e) are exempt from disclosure on the basis of this exception and that all the circumstances of the case the public interest favours withholding this information.
3. The Commissioner does not require further steps.

Background

4. UKEF provided the Commissioner with the following useful background regarding this request:

“UK Export Finance provides a variety of financial products and services to fulfil the core of its mission of supporting exports from the UK. The transaction that is the subject of this request involves a Transition Export Development Guarantee (“TEDG”). This product involves the provision of a guarantee by UKEF to a lender (or group of lenders) in support of finance facilities to unlock working capital for a business, which may be used to invest in exporting. The TEDG product requires businesses engaged in certain activities involving fossil fuels to commit to transitioning away from fossil fuel sectors.

The Wood loan is the first TEDG issued by UKEF and is in place to help Wood capitalise on opportunities linked to clean energy, hydrogen, and decarbonisation.

The Agreement takes the form of a contract entered into between Wood, as borrower, certain of its subsidiaries, as guarantors, and the Facility Lenders. It involves provision in total of a \$600 million commercial loan by the Facility Lenders to Wood, provided in the form of two loan facilities. Notably, UKEF is not a lender to Wood and is not a party to the Agreement. The Facility Agreement documents two separate finance facilities within the same contract, these being (i) a “UKEF Facility”, worth 80% (\$480m) of the total value (under which the Facility Lenders benefit from a UKEF guarantee, which is provided through the separate Guarantee and Agency Agreement... and (ii) a “Commercial Facility”, worth 20% (\$120m) of the total value, provided by the Facility Lenders without the benefit of any guarantee from the UK government, which is provided on the same terms as the UKEF Facility.”

Request and response

5. The complainant submitted the following request to UKEF on 11 May 2023:

“I would like to request a copy of the contract that was signed by Wood Group for the government-backed Green Transition Loan it received in 2021 that was mentioned on this web page:

<https://www.gov.uk/government/news/ukef-backs-landmark-430-million-green-transition-loan-for-wood-plc>”

6. UKEF responded to the request on 20 June 2023 and confirmed that it held the requested information but considered this to be exempt from disclosure on the basis of regulation 12(5)(e) (confidentiality of commercial information) of the EIR.
7. The complainant contacted UKEF on the same day and asked it to conduct an internal review.
8. UKEF informed him of the outcome of the review on 27 July 2023. This upheld the application of regulation 12(5)(e) and also explained that regulation 13 (personal data) of the EIR applied to information that could be used to identify individuals.

Scope of the case

9. The complainant contacted the Commissioner on 30 July 2023 in order to complain about UKEF's decision to withhold the requested information on the basis of regulation 12(5)(e) of the EIR. He did not seek to contest the application of regulation 13.
10. During the course of the Commissioner's investigation UKEF disclosed a redacted version of the requested agreement to the complainant on 3 November 2023. UKEF explained that the redacted material was exempt from disclosure on the basis of regulations 12(5)(e) and 13.
11. Following this disclosure the complainant argued that the redactions had been excessively applied and that there needed to be a more transparent release of information.
12. In view of the above, the scope of this notice is to consider whether the information redacted from the agreement on the basis of regulation 12(5)(e) is exempt from disclosure.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

14. Regulation 12(9) states that:

“(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).”

15. The Commissioner is satisfied that the agreement is a measure likely to affect both the state of the environment (regulation 2(1)(a)) and factors likely to affect elements of the environment (regulation 2(1)(b)) given that the purpose of it is to support Wood continue to transition to capitalise on opportunities linked to clean energy, hydrogen and decarbonisation. The agreement is therefore environmental information by virtue regulation 2(1)(c) of the EIR.
16. In its submissions to the Commissioner UKEF recognised that pursuant to regulation 12(9), information on emissions cannot be withheld under, amongst other exceptions, regulation 12(5)(e). UKEF noted that there is a small amount of information on emissions contained in Schedule 13 of the agreement which is subject to this override. UKEF explained that this information relates to Climate Transition Plan KPI 2, concerning targets for the reduction in Wood Group’s Scope 1 and Scope 2 carbon emissions, and includes the definition provided in Part 1 and the KPI Target dates and percentages in table in Part 2. UKEF explained to the

Commissioner that it was satisfied that the remaining information contained in the agreement was not information on emissions.

17. The Commissioner concurs with UKEF's assessment and is satisfied that there are no further parts of the agreement withheld on the basis of regulation 12(5)(e) that constitute information on emissions.

Regulation 12(5)(e) - Commercial or industrial information

18. Regulation 12(5)(e) states a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
19. As set out in the Commissioner's guidance¹, the exception can be broken down into a four-stage test. All four elements are required in order for the exception to be engaged:
- The information is commercial or industrial in nature.
 - Confidentiality is provided by law.
 - The confidentiality is protecting a legitimate economic interest.
 - The confidentiality would be adversely affected by disclosure.

Is the information commercial or industrial in nature?

20. For information to be commercial in nature, it needs to relate to a commercial activity, either of the public authority or a third party. The essence of commerce is trade. A commercial activity generally involves the sale or purchase of goods or services, usually for profit.
21. UKEF explained that the agreement provides Wood with the financial resource to take advantage of green trade opportunities to increase their export revenue in relation to low-carbon projects. Considering this will involve the sale of goods and/or services for profit, it is, in UKEF's view, a commercial activity.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-12-5-e-commercial-or-industrial-information/#:~:text=Practical%20points-,What%20does%20the%20EIR%20say%3F,protect%20a%20legitimate%20economic%20interest.>

22. Furthermore, UKEF explained that the agreement consists of information about the terms and conditions of the loan facilities provided by the facility lenders to Wood. Therefore in its view the information contained within it is commercial in nature as it is concerned with the provision of financial services, in the form of loan facilities, provided by a group of lenders to a borrower, with a view to profit.
23. In view of the above, the Commissioner accepts that the withheld information is clearly commercial in nature.

Is the withheld information subject to confidentiality provided by law?

24. The Commissioner considers that 'provided by law' will include confidentiality imposed on any person by the common law of confidence, contractual obligation or statute.
25. With regard to the common law of confidence, there are two issues that need to be considered:
 - Does the information have the necessary quality of confidence? In the Commissioner's view if the information is not trivial nor in the public domain, it has the necessary quality of confidence.
 - Was the information shared in circumstances creating an obligation of confidence?
26. UKEF argued that there was an obligation of confidentiality in respect of the agreement for two reasons.
27. Firstly, because the agreement contains confidentiality clauses.
28. Secondly, even if these were not in place, UKEF would be under a common law duty of confidence in respect of the agreement. UKEF explained that the information in question was not trivial and is not in the public domain, meaning it has the necessary quality of confidence. Further, the information was shared in circumstances creating an obligation of confidence, particularly given the fact that the agreement contains commercially sensitive, financial information relating to various third parties. UKEF noted that the fact that the agreement itself includes confidentiality obligations underlines its sensitive and confidential character. In view of this UKEF argued that the agreement is a confidential and commercially sensitive document, which was negotiated and entered into on that basis, and which was shared with UKEF in the context of negotiating commercial loan facilities and guarantees. In all the circumstances, UKEF argued that it would be reasonable for the parties involved to expect it to treat the agreement as confidential. UKEF explained that it had consulted the parties in question in view of this request and they had confirmed their view that information was

confidential (and by setting out the commercial prejudice that would occur if the information was disclosed, details of which are contained below).

29. Taking the above into account, the Commissioner is satisfied that the agreement is covered by a common law duty of confidence. The agreement clearly has the necessary quality of confidence and was shared with UKEF on the understanding that it would be treated confidentially. In addition, the Commissioner also accepts that there is a contractual obligation of confidence given provisions within the Agreement.

Is the confidentiality provided to protect a legitimate interest?

30. The First-tier Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd*² that, to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. It is not enough that disclosure might cause some harm to an economic interest. The public authority needs to establish that, on the balance of probabilities, ie more probable than not, disclosure would cause some harm.
31. UKEF argued that the legitimate economic interests being protected are those of Wood, its subsidiaries, the facility lenders, and its own interests. Broadly this was to ensure a) competitors do not gain access to commercially valuable information and thereby gain an unfair advantage, b) protect parties' commercial bargaining positions in the context of future negotiations, and c) avoid significant commercial reputational damage.
32. UKEF provided the Commissioner with detailed submissions in respect of the impact on each particular party. The Commissioner has summarised these below but excluded the parts of the submissions which refer directly to the content of the withheld information.
33. In respect of Wood's commercial interests, the UKEF explained that the agreement contains the pricing and commercial position which Wood negotiated with the facility lenders, including the terms and conditions of the loan. UKEF explained that this information is not publicly available and argued that disclosing it would harm Wood's ability to secure future

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i479/%5b2011%5dUKFTT_EA20100106_\(GRC\)_20110104.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i479/%5b2011%5dUKFTT_EA20100106_(GRC)_20110104.pdf)

negotiations with financial counterparties. UKEF noted that the agreement documents both the UKEF facility and the commercial facility provided by the facility lenders, without the benefit of any guarantee by the UK government, although on the same terms as the UKEF facility. Therefore, UKEF argued that disclosure of the agreement would inevitably disclose the terms of the commercial facility, which is a private commercial arrangement between the facility lenders and Wood.

34. With regard to the lender's commercial interests, UKEF emphasised that it was not standard practice within the private loan market to disclose such agreements. Therefore, publicly disclosing the commercial details of this agreement would be likely to have a negative impact on market conditions and competitiveness of terms available to other market participants. For example, there is a risk that other potential lenders could use the terms in the agreement as a benchmark of terms offered by the facility lenders. Furthermore, UKEF argued that disclosure would also prejudice the commercial interests of the facility lenders as it could encourage potential borrowers requiring similar private and commercial loan agreements to believe that the facility lenders are at risk of disclosing sensitive information. This could lead potential borrowers to choose other banks to perform those functions.
35. In terms of its own commercial interests, UKEF explained that it operates as a lender and guarantor, working with a wide range of banks and businesses. The expectation of confidentiality in negotiating and agreeing financing facilities is a key characteristic of the loan market. Borrowers and lenders generally expect the terms of the loans they negotiate to be confidential between themselves. UKEF argued that the prospect that documentation could be released is therefore regarded with real concern.
36. UKEF explained that lenders fear that such disclosure will allow competitors to gain an insight into the terms they are likely to accept more generally, in other loan facilities. Borrowers are likewise concerned that disclosure could allow competitors to learn about the terms of their facility, and then seek stronger terms in their own borrowing, thereby gaining a commercial advantage. UKEF explained that knowledge of the terms agreed on previous transactions is a valuable negotiating tool which can directly undermine a lender's or borrower's bargaining position on other loan negotiations. It can be difficult for a party to justify failing to accept terms favourable to the other side, when it is known they have accepted such terms on another agreement. Taking the above into account, UKEF explained that to remain a competitive and trusted provider of finance, operating in the market, it is concerned of the implications of disclosure of the agreement on its competitive position and reputation.

37. More specifically, UKEF explained that it had real concerns that disclosure of its negotiated terms would be likely to have a negative effect on its own bargaining position in respect of future transactions. It emphasised that each transaction is individually negotiated. If a future borrower on a new deal is able to point, for example, to terms agreed on the Wood TEDG, it would present UKEF with a real difficulty in resisting agreement to similar terms in future.
38. UKEF argued that disclosure could also cause damage to UKEF's relations with existing or previous customers as it could reveal details of more favourable terms being secured than was conceded by UKEF in relation to their own transactions. This could result in pressure being placed on UKEF in relation to existing arrangements to justify why it may have made a concession for Wood that it was not willing to do elsewhere.
39. The Commissioner notes that the common theme running through the commercial risks to each party is the fact that disclosure of the information would impact their respective negotiating positions in respect of future transactions be they seeking finance, providing finance or guaranteeing loans. The Commissioner accepts, as a general principle, that disclosure of information that would harm a party's commercial bargaining position in the context of a future or existing negotiation is a legitimate commercial interest. Based on the submissions provided to him by UKEF, both those set out above and the additional submissions which refer to the withheld information, the Commissioner accepts that there is a real and genuine risk that disclosure of the redacted parts of the agreement would, in the various ways set out by UKEF, harm the commercial interests of parties in a number of different future negotiating scenarios.
40. Furthermore, for the reasons set out by UKEF, the Commissioner accepts that disclosure of the information risks causing a reputational damage such that its commercial standing, and in turn its interests, would be harmed in the future.
41. The Commissioner is therefore satisfied that this limb of the test is met for all parts of the information that having been redacted on the basis of regulation 12(5)(e).
42. In reaching this conclusion the Commissioner notes that UKEF explained to him that in determining and applying redactions to the agreement, UKEF has adopted a 'clause-by-clause' approach. UKEF highlighted that the agreement is a complex 300-page document, consisting of 42 clauses and 16 schedules, making a 'line-by-line' assessment for redaction would be a particularly difficult and onerous task. UKEF determined that this approach would cause a significant diversion of

UKEF's resources, and therefore, would be likely to engage regulation 12(4)(b) of the EIR, on the basis that the time and resource required for this exercise would be manifestly unreasonable. Therefore, UKEF explained that it opted to undertake a clause-by-clause assessment, which it noted is in line with Commissioner's guidance, which states that "[w]here the information requested is a contract, rather than applying section 43 in a 'blanket' fashion and viewing the contract as a whole, you need to consider each clause within the contract individually, with a view to identifying whether it may be disclosed". UKEF also noted that this reflects the approach taken in previous decision notices and Tribunal decisions dealing with the disclosure of contracts. The Commissioner agrees that UKEF's approach to the redaction process, ie taking a clause by clause approach, has been an appropriate one and is in line with his guidance.

43. Furthermore, UKEF explained that in assessing the application of regulation 12(5)(e) to the agreement one key approach it took was to contrast the final negotiated agreement with the UKEF TEDG template document. UKEF explained that this document is the starting point for all negotiations on such UKEF supported loans. By contrasting the two documents, UKEF explained that it had identified where Wood has secured deviations from the template through the negotiation process. By withholding clauses where such deviations were agreed, UKEF explained that it is able to avoid the worst risks of prejudice to its bargaining position in future transactions, as a future borrower will not be aware of precisely where or how UKEF has accepted changes or otherwise compromised from its 'starting position' on the Wood transaction. UKEF explained that it had also taken into account the legitimate concerns raised by the third parties as part of the consultation process.
44. In addition, UKEF highlighted that clauses which are not otherwise viewed as highly sensitive contain cross-references to other clauses within the agreement which are sensitive, or contain references which are in themselves sensitive, despite the rest of the clause being deemed not sensitive. Where this is the case, in a number of instances, the references have been redacted, meaning that the clause contains only a partial redaction.
45. The Commissioner appreciates the complainant's position that in his view UKEF has still redacted too much information from the agreement and that further, less sensitive aspects of it could be disclosed. The Commissioner acknowledges that considerable portions of the agreement have been redacted. However, the Commissioner wishes to emphasise that UKEF has provided him with specific arguments for each redaction or set of redactions, in addition to its overarching arguments in support of its reliance on regulation 12(5)(e). Furthermore, based on

UKEF's submissions set out above, the Commissioner is satisfied that it has given careful and diligent consideration to each particular redaction that has been made. Having considered these submissions the Commissioner is satisfied that UKEF has submitted a sufficiently compelling case to justify withholding each part of the redacted agreement.

Would the confidentiality would be adversely affected by disclosure?

46. Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it is inevitable that this element will be satisfied. Disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information, and would also harm the legitimate economic interests previously identified.
47. For the reasons set out above the Commissioner accepts that regulation 12(5)(e) applies.

Public interest test

48. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
49. UKEF explained that it had identified the following public arguments in favour of disclosure:
 - There was a substantial sum of public money which would potentially be at risk from UKEF's guarantee. UKEF acknowledged that this was a legitimate matter for public concern and debate that would be assisted by the appropriate transparency of information.
 - There was a public interest in transparency and efficacy of UKEF's TEDG which is intended to help Wood in its transition plans. Disclosure could assist with more effective participation in environmental decision making.
50. UKEF also explained that it had identified the following public interest favours in favour of maintaining the exception:
 - Disclosure would harm the legitimate interest of the Wood, its agent, lenders and UKEF.

- UKEF has placed information in relation to the Wood TEDG into the public domain. UKEF highlighted its Annual Report and Accounts³ which provide a list of businesses supported for each year including names of the parties involved, destination market, project/goods and services provided, the UKEF product and the maximum liability. UKEF explained that it also issued public notices announcing where it is providing notable support, including the Wood TEDG.⁴ It has also publicly disclosed guidance for TEDG applications.⁵ In addition, UKEF explained that it has provided further information on the Wood TEDG in response to other information requests, for example disclosing details of the lenders, details of the third-party consultant who is assessing whether Wood Group is meeting its sustainability performance targets and information around other TEDG support.
- There is a strong public interest in protecting the confidentiality of commercial information that is vital for the effective functioning of the commercial lending market and the UKEF Guarantee scheme. The disclosure of information in the agreement could deter or discourage other potential borrowers or lenders from participating in the UKEF Guarantee scheme or similar initiatives, thereby undermining the public interest in supporting the transition to a low-carbon economy and the promotion of UK exports.
- There is a wider public interest in preserving the principle of confidentiality. The relationship between UKEF and the businesses it supports relies on trust and the free flow of information. Releasing this information would impair this trust and would be likely to discourage other businesses from dealing with UKEF and/or applying for UKEF support, as there would be no assurance that confidential information would be kept in confidence. Ultimately, this would have an impact on UKEF's ability to operate in the market and would impact UKEF's ability to carry out its statutory function, fulfil its mandate, and serve the public interest by supporting UK exporters.

³ <https://www.gov.uk/government/collections/uk-export-finance-annual-reports-and-accounts>

⁴ <https://www.gov.uk/government/news/ukef-backs-landmark-430-million-green-transition-loan-for-wood-plc>

⁵ <https://www.gov.uk/government/publications/guidance-for-companies-transitioning-out-of-fossil-fuel-exports-applying-for-an-export-development-guarantee/guidance-for-companies-transitioning-out-of-fossil-fuel-exports-applying-for-an-export-development-guarantee>

51. In balancing these arguments UKEF explained that it had given careful consideration on a clause by clause basis as to where the balance of public fell. It emphasised to the Commissioner that given the very high importance attached to the principle of confidentiality in the loan market, even the degree of disclosure that had now taken place will cause prejudice to UKEF's interests, impacting on its relationship with Wood and the facility lenders. UKEF argued that it may well also cause a degree of disquiet among future borrowers or lenders, many of whom will be concerned that any facility agreements they enter into with UKEF involvement in future are also at risk of being made partially public in response to a similar request, which may impact on their willingness to seek UKEF support or to provide the extensive disclosure of confidential commercial information to UKEF which is essential to progress transactions. However, UKEF acknowledged that such risks could be mitigated by the consultation process it had undertaken with the parties and the fact that where it was satisfied that material was inherently sensitive and/or would give rise to the adverse effects to the commercial interests of Wood, the facility lenders or UKEF, it should be withheld. Taking the above into account, UKEF was satisfied that the partial disclosure of the redacted agreement represented the correct balance of the competing public interest arguments.
52. In the Commissioner's view disclosure of the withheld information would provide considerable further transparency in respect of this agreement, and more broadly, UKEF's provision of a guarantee function. The Commissioner agrees that there is a legitimate and clear public interest in allowing the public to understand the details of such transactions to provide insight into how UKEF operates. In the particular circumstances of the case in the Commissioner's view this argument attracts particular weight given that there was a novel aspect to this transaction given that this was the first TEDG. Furthermore, the Commissioner considers that these arguments attract additional further weight given that the TEDG has been the subject of some criticism.⁶
53. However, the Commissioner agrees that there is an underlying public interest in ensuring that the confidentiality of commercial information is protected. Furthermore, in the specific circumstances of this case the Commissioner recognises that disclosure of the withheld information risks harming the commercial interests of a variety of parties, UKEF, Wood and the lenders in a variety of future transactions unconnected to

⁶ <https://www.theguardian.com/environment/2023/jun/07/scottish-firm-expands-oil-and-gas-business-after-green-transition-loan> , <https://capitalmonitor.ai/opinion/why-the-wood-group-green-loan-must-be-scrutinised-further/>

the one which is the focus of this request. The Commissioner accepts that it is in the public interest for third parties to be able to protect their commercial interests in future transactions. Furthermore, the Commissioner considers there to be a significant public interest in ensuring that commercial interests of UKEF are not harmed. Similarly, the Commissioner considers it would be firmly against the public interest to disclose information which would impact on UKEF's statutory function and the Commissioner accepts that disclosing information which impacts on UKEF being viewed as a trusted partner could lead to this. Given the widespread risks in disclosure of the information, and despite the public interest arguments identified above, and even taking into account the presumption in favour of disclosure, the Commissioner is satisfied that the public interest favours maintaining the exception.

Right of appeal

54. 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

55. 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.
56. 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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