

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2024

Public Authority: Office of Gas and Electricity Markets (Ofgem)

Address: 10 South Colonnade
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested correspondence between the Office of Gas and Electricity Markets (Ofgem) and The Times newspaper in March 2023. Ofgem provided some information but withheld other information, citing section 31 – law enforcement, section 44 – prohibitions on disclosure, and section 40 of FOIA – personal information.
2. The Commissioner's decision is that Ofgem correctly cited section 31(1)(g) with subsection 31(2)(c) of FOIA to refuse to disclose the withheld information and that the public interest favoured maintaining the exemption. He has also decided that sections 44(1)(a) of FOIA was correctly cited.
3. The Commissioner does not require further steps.

Request and response

4. On 8 October 2023, the complainant wrote to Ofgem and requested information in the following terms:

"Please can I have a copy of all correspondence you have exchanged with the Times newspaper in March 2023? This should include any notes you have made of verbal conversations."

5. Ofgem responded on 3 November 2023 disclosing some redacted emails and citing sections 31(1)(g) with 31(2), 40(2) and 44(1)(a) FOIA as its basis for refusing to provide the remaining information.
6. The complainant asked for an internal review, primarily challenging the use of section 31 and 44 by Ofgem. Following an internal review, Ofgem responded on 4 December 2023 upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 4 December 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to look at whether Ofgem is entitled to rely on sections 31 and 44 as a basis for refusing to provide the withheld information.

Reasons for decision

9. The request in this case is identical to another request made to Ofgem in all but one detail. The other request asks for exactly the same information but covering the period of February 2023 rather than March 2023. The exemptions cited by Ofgem were the same in both cases and the arguments presented to the Commissioner to support the use of the exemptions were identical in each case.
10. The Commissioner has already considered the request for the February 2023 emails in a decision notice¹ issued in May 2024. Due to the almost identical nature of the request the Commissioner does not consider it necessary to repeat his reasoning here as to why he agreed with Ofcom that the information was correctly withheld.
11. His reasoning carries across in this case due to the ongoing nature of the investigation, the information already in the public domain and the statutory bar under section 105 of the Utilities Act 2000 preventing disclosure of information obtained under the Gas and Electricity Acts. His full reasoning can be read in the earlier decision notice.

¹ [ic-281994-m0y0.pdf \(ico.org.uk\)](https://ico.org.uk/decision-notice/281994-m0y0.pdf)

12. For the same reasons as in the other decision notice the Commissioner finds that the section 31 and 44 exemptions have been correctly applied and, in the case of section 31, the public interest favours maintaining the exemption and withholding the information.

Right of appeal

13. 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

14. 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.
15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
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Wycliffe House
Water Lane
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