

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

Decision notice

Date: 7 October 2024

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

Decision (including any steps ordered)

1. The Commissioner's decision is, first, that the information the complainant has requested about a Feed-In Tariff transfer is environmental information which Ofgem correctly handled under the EIR.
2. The Commissioner has also decided that Ofgem has disclosed all the information it holds that's relevant to the complainant's request and which isn't subject to an exception. The information Ofgem has withheld is personal data which is excepted under regulation 13(1) of the EIR. However, the timeliness of Ofgem's response didn't comply with the requirements of regulation 5(2) and 14(2).
3. It's not necessary for Ofgem to take any corrective steps.

Background

4. In its submission to the Commissioner, Ofgem has explained that the 'Feed-In Tarriff (FIT) scheme is an environmental scheme, which provides payments for generating electricity. Householders like the complainant are 'FIT generators.' They have solar panels eligible for these payments, which are made by the FIT Licensee directly to the generators.

5. Energy retail supply companies are obliged to be a FIT Licensee once they pass a certain threshold number of domestic customers. A FIT generator isn't obliged to use the same company for both their energy supply and FIT payments. Therefore, a FIT generator can change FIT Licensee to obtain more preferable payment terms for their FIT payments without having to change who supplies their energy.
6. SSE transferred its FIT generators to OVO, resulting in the payments made to FIT generators arriving later, but not in breach of supplier licence conditions. The payment amount was unchanged.
7. The complainant is, along with a number of other FIT generators formerly with SSE as a FIT Licensee, unhappy about this. SSE made FIT payments more promptly than other licensees, and the payment schedule of OVO is similar to other FIT licensees. So, although FIT generators are able to shop around for another FIT Licensee, they all offer similar payment terms.
8. The complainant has informed Ofgem that they've complained to OVO and reached deadlock, then complained to the energy ombudsman. Ofgem doesn't know the outcome of this.
9. Ofgem has detailed its interactions with the complainant since March 2023 and has acknowledged a shortcoming in its dealing with complainant – it found it had accidentally deleted the request being considered in this case and therefore didn't respond to the request within the required time period.
10. However, in its submission, Ofgem has also explained to the Commissioner that responding to the complainant's requests has been made more difficult due to the volume and length of the correspondence it has received from the complainant. It has also been difficult to engage constructively with the complainant, to clarify the information they sought, the nature of their dissatisfaction with Ofgem's responses and to understand what information they believe Ofgem has incorrectly withheld.
11. How the complainant communicated with Ofgem isn't a formal consideration in this case. However, based on material Ofgem provided to him, the Commissioner agrees that the correspondence Ofgem received from the complainant was generally more complex and difficult to process than is usual or desirable.

Request and response

12. In correspondence to Ofgem on 13 September 2023, the complainant requested the following information:

1. "The termination by SSE Energy Supply Ltd ("SSEESL") of its contractual relations with its Feed-in Tariff ("FIT") Generators at or about the end of June 2022 without the prior written agreement of all of those FIT Generators).
2. The transfer by SSEESL of its FIT Generators and/or their FIT accounts to OVO Electricity Ltd ("OVO") at or about the end of June 2022 (without the prior written agreement of all of those FIT Generators).
3. The substitution by OVO of its "FIT Statement of Terms" in place of SSETSL'S Statement of FIT Terms for SSEESL's FIT Generators at or about the end of June 2022 (without the prior written agreement of all of those FIT Generators).
4. The failure of OVO to include within its "FIT Statement of Terms" for SSEESL's FIT Generators provisions corresponding to those mandated by Clauses 6.2, 6.3.1"(a), (b), (c), (d), (e), (f), (h) and (j) and 6.3.2(a), (b), (d) and (e) of Part 1 of Schedule A of Condition 33 of the Standard Conditions of Electricity Supply Licence.
5. The failure of OVO to obtain the written agreement of all of SSEESL's FIT Generators to its "FIT Statement of Terms.

Without prejudice to the generality of the foregoing request I would like to know: (i) how and when Ofgem became aware of the events referred in paragraphs 1- 5 above; (ii) what enquiries it made regarding those events; and (iii) what regulatory and other assessments it made in relation to those events before, during and after their occurrence to date.

[6] In addition, I should like to know whether Ofgem has received any complaints or expressions of concern in relation to the events referred to in paragraphs 1 -5 above to date and, if so, what its internal responses thereto have been to date."

13. The information requested in this particular request is described relatively clearly. Ofgem responded to the request on 12 December 2023. In this correspondence it refers to the request having been submitted on 18 October 2023; this is because the complainant had re-submitted their request on that later date.
14. Ofgem first disclosed information within scope of questions 1-5 and information about [6], complaints and enquiries. It also provided a link to published information that's relevant to question 1, a link to its Supplier Performance Report in respect of questions 2-4 and addressed question 5.

15. Ofgem advised that the complainant's query about its awareness and response to the events that are the focus of their interest wasn't a request for [recorded] environmental information, but it addressed that query.
16. Finally, Ofgem advised that it had redacted personal data from the disclosed information under regulation 13 of the EIR.
17. The complainant requested an internal review on 22 December 2023. They first disputed that the requested information was environmental information. They also considered that Ofgem hadn't provided all the information they'd requested and was dissatisfied with redactions Ofgem had made to the disclosed information.
18. In correspondence dated 11 January 2024, Ofgem appears to have categorised this request for a review as a new request, giving it a new reference number. Ofgem advised the complainant that their 22 December 2023 correspondence wasn't clear and asked them to either send their request to it separately, or to separate out their request from other commentary in their letter clearly.
19. The complainant responded on 17 January 2024. Amongst further general commentary in their letter, they re-stated that they considered that Ofgem held further information relevant to their request and that they were dissatisfied with the redactions Ofgem had made.
20. In this correspondence the complainant also requested redacted copies of Ofgem's response to the complaints and enquiries they'd referred to in their request. This was a new request, which isn't being considered here.

Reasons for decision

21. The complaint that the complainant submitted to the Commissioner concerns their request 13 September 2023. This reasoning therefore focusses on that request. It will first consider whether the request is for environmental information which should be handled under the EIR. The Commissioner will also consider whether Ofgem holds any further information within scope of the request and whether it was entitled to redact some information from the information it disclosed, under regulation 13 of the EIR (or the FOIA equivalent). He will also consider the timeliness of Ofgem's response.
22. Under 'Other matters' the Commissioner will discuss his guidance on writing effective requests for information.

Is the requested information environmental information?

23. Of most relevance here, 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, (b) factors, such as energy, affecting or likely to affect the measures in (a), and (c) measures, such as policies, programmes and activities, affecting or likely to affect those measures.
24. The request in this case concerns the transfer of FIT generators from SSE to OVO. The FIT scheme is an environmental scheme, and the Commissioner is satisfied that the information the complainant has requested meets the definition of environmental information under regulation 2(1), above. Ofgem was therefore correct to handle the request under the EIR.

Regulation 5 – access to environmental information

25. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request, if it's not subject to an exception.
26. In its submission to the Commissioner, Ofgem has detailed the electronic searches it carried out for information relevant to the complainant's request.
27. Ofgem first says it identified the mailbox of the most relevant member of its staff ie the staff member who dealt with the FIT scheme, and it searched that mailbox. It used the search terms "SSE", "SSEESL" or "SSE ESL" and "OVO" together.
28. Ofgem says it also carried out a wider search for all documents and correspondences containing "SSE" and "OVO", as well as "FIT" or "Feed-in Tariff" or "Feed in Tariff" together in the same document.
29. This resulted in over 7000 documents being identified that might contain relevant information. At this stage Ofgem considered it was evident that the request was voluminous and complex, so it notified the complainant that it needed to extend the deadline for its response with a new deadline of 13 December 2023.
30. Ofgem has gone on to explain that the nature of the request was so general that it wasn't possible to conduct a more specific search, and it didn't think the complainant could reasonably be expected to reduce the scope of their request any further. Ofgem felt that, if they did so, they would be likely to submit further requests for information not included in the reduced scope request. This would lead to more work, difficulty for

Ofgem in avoiding processing the same documents again, and confusion in explaining the different search results.

31. Although 7000 documents is a number of documents that's significantly over the threshold for engaging the EIR 'Manifestly Unreasonable' exception 12(4)(b), Ofgem decided to process the request anyway. This was in order to minimize future work and provide the complainant with the information in full, in the clearest way possible. In turn, this would minimize further unnecessary correspondence.
32. To manage the request, a senior manager who handles the FIT scheme and two FIT scheme staff members were consulted. These staff sifted the documents in scope in order to identify the relevant information. This activity took those staff away from their normal duties. However, it was deemed worthwhile as the team that processes information requests normally didn't have the capacity or subject knowledge to review such documents as quickly or professionally as the experienced operational team members
33. Once all 7000 documents were manually reviewed, Ofgem identified 13 as pertinent to the request. It disclosed these documents with only third party personal data redacted under regulation 13. Ofgem has confirmed that it didn't withhold any other information, once it had identified the pertinent documents for this request.
34. Faced with 7000 documents possibly within scope of the complainant's request, the Commissioner considers that Ofgem went over and beyond what it needed to do, in order to identify which of these were directly relevant. He understands why Ofgem did this in the circumstances of this request, but in the Commissioner's view, it would have been reasonable for it to have relied on regulation 12(4)(b) to refuse the request as manifestly unreasonable.
35. The Commissioner considers that the searches that Ofgem carried out for relevant information – and the staff involved in those searches and the subsequent review process – were entirely appropriate and satisfactory. His decision is that, on the balance of probabilities, Ofgem has disclosed all the non-excepted information that it holds that's relevant to the request and complied with regulation 5(1) of the EIR.

Regulation 13 – personal data

36. Regulation 13(1) of the EIR provides that information is excepted from disclosure if it's the personal data of an individual other than the requester and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).

37. The most relevant principle is Article 5(1)(a). This states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
38. The Commissioner has first considered whether the information Ofgem redacted from the information it disclosed can be categorised as other individuals’ personal data. The information is the names and contact details of Ofgem and SSE staff. As such the information relates to those individuals and they can be identified from it. The information is therefore the personal data of those individuals – the ‘data subjects.’
39. The Commissioner has gone on to consider whether disclosing the personal data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
40. Personal data is processed when it’s disclosed in response to an EIR request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
41. Article 6(1)(f) states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”
42. In order to determine whether disclosing the personal data would be lawful the Commissioner considers three ‘tests’: the legitimate interest test, the necessity test, and the balancing test.
43. The complainant has an interest in a particular FIT transfer. That’s a perfectly legitimate interest for them to have but there’s little wider interest in the related personal data being withheld here, save for disclosure demonstrating that Ofgem is fully open and transparent.
44. The Commissioner has next considered whether disclosing the personal data would be necessary to address the legitimate interests that have been identified. This test is one of reasonable necessity and involves considering alternative measures which may make disclosing the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
45. As noted, for personal reasons the complainant has an interest in a FIT transfer and Ofgem has disclosed to them correspondence about that

transfer. The substance of that correspondence has been disclosed; only the personal data in the correspondence has been redacted. The Commissioner considers that the information that has been disclosed sufficiently addresses the complainant's interest in the FIT transfer, and the wider interest in Ofgem demonstrating its transparency. In his view, disclosing people's personal data would be unnecessarily intrusive and that, therefore, disclosure isn't necessary. The Commissioner therefore finds that there's no Article 6 basis for processing and so disclosing the personal data wouldn't be lawful.

46. Because disclosure isn't necessary and wouldn't be lawful, it hasn't been necessary to consider the final, balancing test where the complainant's legitimate interests are balanced against the data subjects' rights and freedoms.
47. The Commissioner's decision is that Ofgem correctly redacted personal data from information it disclosed, under regulation 13 of the EIR.

Procedural matters

48. Under regulation 5(2) of the EIR, a public authority must comply with regulation 5(1) as soon as possible and within 20 working days following the date of receipt of the request. Regulation 14(2) requires a public authority to provide a refusal notice in respect of excepted information within the same time period.
49. In this case, the complainant originally submitted their request on 23 September 2023 and Ofgem didn't make information available or issue a regulation 13 refusal notice until 12 December 2023. Ofgem therefore didn't comply with regulations 5(2) and 14(2). Ofgem has explained to the Commissioner why it didn't meet the deadline this time and confirmed that it has taken steps to ensure this doesn't happen again.

Other matters

50. The EIR and FOIA concern solely information held in recorded form. This legislation doesn't oblige a public authority to answer general queries, give opinions or provide explanations.

51. The Commissioner has produced guidance on how to write an effective request for recorded information¹.
52. In relation to any request they may submit in the future – to Ofgem or another public authority - the complainant may find it useful to review this guidance. It could help them write a request more likely to generate a satisfactory response – in terms of addressing the specifics of their request, and the timeliness of the response. A clear request also reduces the impact of a request on a public authority's resources – which are likely to be stretched at this time.

¹ <https://ico.org.uk/for-the-public/official-information/preparing-and-submitting-your-information-request/>

Right of appeal

53. 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

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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