

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2025

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the requested information about a specific Independent Distribution Network Operator licence application is exempt information under section 43(2) and section 44(1)(a) of FOIA. These exemptions concern commercial interests and prohibitions on disclosure, respectively.
2. It's not necessary for Ofgem to take any corrective steps.

Request and response

3. The complainant made the following information request to Ofgem on 11 July 2024:

"Please accept this as a written FOI request relating to the decision to grant a Distribution Licence (dated 05th July 2024) to Green Generation Energy Networks Cymru Limited (the Company). In respect of this decision, I requested the following information:

*Copies of Ofgem's internal policies, procedures, guidance or similar which are applicable when determining an application such as this

*Copies of all correspondence, meeting notes, decision making documents or similar relating to a consideration of the application from the Company by Ofgem and relating to the decision by Ofgem to grant the Company a Licence

*Copies of all correspondence, notes, documents or similar which evidence how Ofgem considered representations made by third parties in respect of the consultation about the application for Licence.”

4. Ofgem issued a refusal notice on 8 August 2024, relying on sections 43(2) and 44(1) of FOIA to withhold the information.
5. Ofgem maintained this position following its internal review of 16 September 2024.

Reasons for decision

6. This reasoning covers Ofgem’s application of section 43(2) and section 44(1)(a) of FOIA to the complainant’s request.

Section 43 – commercial interests

7. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
8. In its response to the request, Ofgem indicated that its commercial interests “would” be prejudiced if its internal policies, review criteria and thought processes were disclosed as disclosure would prejudice the Independent Distribution Network Operator (IDNO) licencing process.
9. Ofgem said that disclosing that information would prevent IDNO applications from being submitted on their merits. That was because disclosure would make it possible for an applicant to submit an application for a licence based on the information that the applicant knew Ofgem would treat favourably. That would potentially result in a substantial increase in the cost – to Ofgem – of monitoring IDNO licence holders.
10. The Commissioner asked Ofgem for further explanation on that point. Ofgem said it maintained its view that releasing the requested documents will lead to a substantial increase in costs of determining IDNO licence applications and applications generally.
11. It explained that releasing the information will lead to an increase in the costs it incurs when it’s verifying the information that applicants have provided. Currently, it says, it undertakes much of these checks using a mixture open-source websites and other applications. Releasing the internal guidance and documentation will “undoubtedly” mean that Ofgem will need alternative sources of verification during the application process. This will mean that it will incur additional costs in the form of

additional manpower, subscriptions, and the procurement of additional anti-fraud measures.

12. The Commissioner is satisfied, first, that the prejudice Ofgem envisages relates to the commercial interests that are applicable to this exemption – in this case, its own commercial interests. Second, on the basis of Ofgem's further explanation, the Commissioner accepts that a causal link exists between disclosing the information and the envisioned commercial prejudice. If Ofgem's IDNO licencing policies, criteria and thought processes were known, an applicant could tailor their IDNO licence application so that it appeared to meet those criteria, whether it did in reality or not. This would make monitoring those licences more costly for the reasons Ofgem has given. Finally, the Commissioner will accept Ofgem's position that the envisioned prejudice would happen ie the likelihood of the prejudice occurring is more probable than not.
13. The Commissioner therefore finds that Ofgem is entitled to apply section 43(2) to the information to which it has applied this exemption. He'll go on to consider the associated public interest test.

Public interest test

14. In their complaint to the Commissioner, the complainant said they'd requested the information to see what's Ofgem's stated policies are, and how Ofgem has complied with those policies in reaching its decision. They said that Ofgem had claimed to have considered third party representations made to it and they wanted evidence of how these representations were considered.
15. Ofgem has recognised that disclosure would:
 - provide the complainant with a detailed insight into its application review
 - highlight the thoroughness of IDNO licence application reviews; and
 - emphasise the degree to which Ofgem considers the representations that it receives for an application.
16. Against disclosure, Ofgem provided the following arguments:
 - It's transparent in the process that it follows to determine IDNO applications and has published several Guidance documents about the application process and the matters that it considers during the statutory consultation process.
 - It had directed the complainant to published information that provides context on how it processes applications and considers representations.

- It's not in the public interest for the cost [to the public purse] of monitoring IDNO licence holders to increase, due to confidence in the accuracy and integrity of licence applications being diminished.
17. The complainant wishes to be assured that, when it granted an IDNO licence to Green Generation Energy Networks Cymru Limited, Ofgem followed its own policies and procedures. The Commissioner has seen no evidence to suggest that it didn't.
 18. The Commissioner considers that Ofgem demonstrates transparency to a satisfactory degree through the relevant information it proactively publishes. In the absence of any compelling arguments for the disclosure of the specific information requested, the Commissioner is satisfied that there's greater public interest in protecting the integrity of the IDNO licence application process and the public purse.

Section 44 – prohibitions on disclosure

19. Section 44(1)(a) of FOIA says that information is exempt information if its disclosure (otherwise than under FOIA) by the public authority holding it is prohibited by or under any enactment.
20. In its response to the complainant, Ofgem confirmed that section 105(1) of the Utilities Act 2000 states that information which has been obtained under or by virtue of the provisions of Part 1 of the Electricity Act 1989, and which relates to the affairs of any individual or any particular business shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on.
21. Ofgem was formed under the Utilities Act and performs functions under the Electricity Act, Gas Act, and various legislation. It's entitled to withhold any information that comes into its possession for the purposes of performing its regulatory functions listed under section 105(1)(a) of the Utilities Act.
22. The Commissioner is satisfied that relevant information that Ofgem obtained from the applicant in question, and which relates to that applicant, it obtained by virtue of its statutory functions.
23. The Utilities Act 2000 provides gateways for lawful disclosure, but the Commissioner doesn't consider that any of these gateways have been met. In any case, these gateways provide a power to disclose, not a duty to disclose.
24. The Commissioner's decision is that Ofgem correctly applied section 44(1)(a) of FOIA to information within scope of the request because the Utilities Act prohibits Ofgem from disclosing it.

25. Section 44 is an absolute exemption which means it's not subject to the public interest test.
26. This section 44 decision is in line with the Commissioner's decisions in [IC-255419-N3J5](#) and [IC-273494-X6Z7](#) which also concerned the IDNO licence application process.

Right of appeal

27. 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

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

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