

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 12 January 2016

**Public Authority:** Department of Energy and Climate Change  
**Address:** 3 Whitehall Place  
London  
SW1A 2AW

### **Decision (including any steps ordered)**

---

1. The complainant has requested seven documents which were provided to the European Commission in support of the UK application for a state aid agreement on the Hinkley Point C nuclear project. The Department of Energy and Climate Change (DECC) dealt with the request under the EIR and withheld the information requested under regulations 12(5)(a)(international relations), 12(5)(e)(confidentiality of commercial or industrial information), 12(4)(d)(material still in the course of completion) and 12(3) and 13 (third party personal data). The Commissioner has found all the requested information to be exempt from disclosure under regulation 12(5)(e) and that at the time of the request the public interest balance favoured maintaining the exception. He does not therefore require DECC to take any steps as a result of this notice.

### **Request and response**

---

2. On 28 October 2014, the complainant wrote to DECC and requested information in the following terms:

*'I seek disclosure of seven specific documents which the British government appear to have submitted to the EC (European Commission) in defence of its proposed state subsidy to EDF to build nuclear reactors at Hinkley Point in Somerset.'*

*The EC approved this state subsidy on 8<sup>th</sup> October 14*

*We know of the existence of these documents following a leaked paper as reported by German newspaper der Spiegel. The leaked paper was*

*drafted under the supervision of outgoing competition Commissioner Joaquin Almunia. It references these seven documents as follows:*

- 1. Modelling work by DECC and analysis of counterfactual scenarios;*
- 2. Report by Oxera on market failures, proportionality, and potential distortions of competition;*
- 3. Poyry study on potential distortions to the internal market and alternatives to nuclear;*
- 4. Redpoint report on the evolution of the electricity sector;*
- 5. A description of Cost Discovery and Verification process, which involved KPMG and LeighFisher;*
- 6. KPMG report on potential distortions to competition;*
- 7. Benchmarking work on the rate of return.'*

3. DECC responded to the request on 24 November 2014 and confirmed that they held all the information requested. They advised the complainant that all the information was exempt from disclosure under a number of EIR exceptions, specifically, regulation 12(5)(a)(international relations), regulation 12(5)(e)(confidentiality of commercial or industrial information), regulation 12(4)(d)(material still in the course of completion). The exceptions are qualified by the public interest test and DECC were of the view that in respect of each exception the public interest favoured withholding the requested information.
4. The complainant requested an internal review of the decision on 24 November 2014 and DECC provided him with this on 19 December 2014. The review upheld the use of the stated exceptions to refuse disclosure.

### **Scope of the case**

---

5. The complainant contacted the Commissioner on 15 January 2015 to complain about the way his request for information had been handled.
6. During the course of the Commissioner's investigation DECC advised that they were also applying regulations 12(3) and 13 (third party personal data) to the names and contact details of the third parties contained in the requested reports.
7. The scope of the Commissioner's investigation has been to determine whether DECC correctly withheld all the requested information under the exceptions applied.

## Reasons for decision

---

### Background

8. In 2006 an energy review carried out by the Government supported, among other proposals, the development of a new generation of nuclear power stations in order to secure the UK's energy needs. Following formal backing for the new nuclear initiative in 2008, EDF Energy began a consultation with local residents in the same year about building a nuclear plant adjacent to the existing Hinkley Point B power plant in West Somerset.
9. EDF's Energy's (EDF) proposal to build two new nuclear reactors, known collectively as Hinkley Point C, at Hinkley Point, was officially nominated by the Government in 2009. The Government accepted that it would be required to establish a price support for a private company committed to developing nuclear energy and there followed discussions with EDF about the plans for the nuclear reactors and the terms of the subsidies. The Coalition Government issued a press release in October 2013<sup>1</sup> confirming that it had reached commercial agreement with EDF on the key terms of a proposed investment contract for Hinkley Point C.
10. In December 2013 the European Commission (the Commission)<sup>2</sup> announced that it had opened an investigation into UK Government measures supporting nuclear energy. The Commission gave the following statement to explain the need for an investigation:

*'The new Hinkley Point C nuclear power station will require debt financing of GBP 17 billion (around €21.6 billion) and will eventually have a capital of about GBP 34 billion (around €43 billion). The construction costs are estimated at GBP 24.5 billion (around €32.1 billion). Start of operation is scheduled for 2023 with an expected operational lifetime of 60 years. The two reactors will produce in total 3.3 GW of electricity – the largest output produced by a single plant in the UK and representing 7% of UK electricity generation. The UK will need about 60 GW of new electricity generation capacity to come online between 2021 and 2030 due to the closure of existing nuclear and coal power plants. The Hinkley Point nuclear power station will use the EPR*

---

<sup>1</sup> <https://www.gov.uk/government/news/initial-agreement-reached-on-new-nuclear-power-station-at-hinkley>

<sup>2</sup> [http://europa.eu/rapid/press-release\\_IP-13-1277\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1277_en.htm)

*technology which is not yet operational anywhere in the world. There are only three projects currently under construction in France, Finland and China which will rely on this technology.*

*Public interventions in favour of companies can be considered free of state aid within the meaning of EU rules when they are made on terms that a private operator would have accepted under market conditions (the market economy investor principle – MEIP). If the MEIP is not respected, the public interventions involve state aid within the meaning of EU rules (Article 107 of the Treaty on the Functioning of the European Union – TFEU) because they confer an economic advantage on the beneficiary that its competitors do not have. The Commission then proceed to assess whether such aid can be found compatible with the common EU rules that allow certain categories of aid. Without these common rules, competition within the EU's Single Market would be distorted by a 'subsidy race' between Member States to the benefit of particular companies<sup>3</sup>.*

11. The Government responded to the Commission on 31 January 2014 and its submission included the reports referred to in the complainant's request, which were prepared by external authors for DECC specifically in connection with the Government's response. The Commission subsequently carried out a public consultation from early March to early April 2014, to which a considerable number of responses (circa 42,000) were received from parties spread across the Member States.
12. DECC has explained that the UK received and responded to many questions from the Commission on a wide range of technical issues in order to assist with their detailed assessment. Much of this information was based on commercially sensitive technical and financial data provided by EDF for the express purpose of assisting the Commission with their investigation. On 8 October 2014 the Commission issued their Closing Decision, which concluded the UK measures for Hinkley Point C were compatible with EU rules. This decision was published in English on the Commission's website on 20 January 2015. The Commission's press release<sup>4</sup> stated:

*'The European Commission has found revised UK plans to subsidise the construction and operation of a new nuclear power plant at Hinkley Point in Somerset to be in line with EU state aid rules. During the in-depth*

---

<sup>3</sup> [http://europa.eu/rapid/press-release\\_IP-14-1093\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1093_en.htm)

<sup>4</sup> [http://europa.eu/rapid/press-release\\_IP-14-1093\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1093_en.htm)

*investigation (see IP/13/1277), the UK has agreed to significantly modify the terms of the project financing. As a result, the state aid provided will remain proportionate to the objective pursued, avoiding any undue distortions of competition in the Single Market. The modifications also reduce UK citizens' financial contribution to the project'.*

13. On 21 October 2015, it was announced that (during a state visit to the UK by the Chinese President Xi Jinping) EDF Energy had reached an agreement with China General Nuclear Power Corporation (CGN) for Hinkley Point C. The mainly state-owned (French) EDF stated that the final cost would be £18bn, with state-owned CGN paying for one third (£6bn) of this amount. The agreement also set up wider UK partnerships to develop new nuclear power stations at Sizewell (Suffolk) and Bradwell (Essex). Although Strategic Investment Agreements have been reached for all three plants, only Hinkley has a target date. It is due to start generating electricity in 2025<sup>5</sup>.
14. However, the above recent developments occurred a year after the complainant's request. It is important to make clear that the Commissioner's consideration of the response provided by DECC is limited to the facts and circumstances that existed at the time of the request (28 October 2014) and cannot be influenced by later events.
15. The Commissioner would note that some of the information requested in this case was the subject of a separate request and recent decision by the Commissioner (FER0571064 – August 2015). In that case the Commissioner determined that DECC had correctly withheld the information requested under regulation 12(4)(b) (manifestly unreasonable request) and regulation 12(5)(a) (international relations) and that the public interest favoured maintaining both exceptions.

**Regulation 12(5)(e) (confidentiality of commercial or industrial information)**

16. DECC has applied regulation 12(5)(e) of the EIR to the seven reports requested (which in total comprise 138 pages). Regulation 12(5)(e) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

---

<sup>5</sup> As reported on the BBC website

*'The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest'*

17. In order for the exception to be engaged, four criteria must be met:

- 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.

#### DECC's position

18. In detailed submissions to the Commissioner, DECC explained that the information contained in the documents requested is commercial or industrial in nature because it relates to commercially sensitive material included in the UK's notification or in the response to the Commission's Opening Decision and is derived from materials provided by NNBG (a wholly owned subsidiary of EDF Energy)/EDF in relation to the financial model and details of the financing arrangements which are subject to a non-disclosure agreement.
19. DECC explained that the information is confidential as it was provided by the authors to the Department as the client with clear confidentiality markings to assist with the Department's submissions to the Commission (which were also provided in confidence) and subject to a non-disclosure agreement with EDF and disclosure restrictions set out by the report authors.
20. The Department explained that the confidentiality protects the UK Government's economic interests as disclosure could be disadvantageous in the context of future negotiations with other developers. More specifically, the confidentiality protects the legitimate economic interests of NNBG/EDF as the information includes financial data relating to the project sponsors and financial data relating to the contracts which NNBG/EDF has in place for its full series of sub-contractors. Similarly, the benchmarking analysis of the IRR (Internal Rate of Return) remains a commercially sensitive issue for EDF given the ongoing discussions with prospective investors. As DECC explained, the disclosure of such analysis could prejudice the discussions with such parties and would be considered competitively sensitive in respect of EDF's competitors in any event.
21. DECC contended that the release of the requested information would damage and adversely affect the commercial position of NNBG/EDF as it would provide commercially sensitive information and economic analysis by Oxera, Poyry and Redpoint to their competitors and would adversely



affect the maintenance of the trust and confidence between the Department and the companies who engaged with them. It would damage the Department's ability to handle commercially sensitive information of third parties.

22. The Department confirmed that they had consulted with EDF in this matter and the company had responded with the following representations:

*'Our understanding is that DECC intends to publish relevant extracts of its advisers' cost discovery and verification reports as part of the CfD (Contract for Difference) approvals process. The DECC policy statements published on its website clearly describes the CD&V (Cost Discovery and Verification Process); public disclosure of the full details of the CD&V process is not appropriate given the ongoing discussions between NNB and its supply chain in respect of the key contracts for the project. Similarly, the benchmarking analysis of the IRR remains a commercially sensitive issue for EDF given the ongoing discussions with prospective investors. The disclosure of such analysis could prejudice the discussions with such parties and would be considered competitively sensitive vis-à-vis EDF's competitors in any event.*

*We have previously noted our fundamental concern that individual reports, advice and documents prepared by DECC's professional advisers during the course of the (European) Commission's investigation should primarily be considered confidential and not be made public. This is particularly the case where such materials contain commercially and/or competitively sensitive information of the stakeholders'.*

23. In their submissions to the Commissioner, the Department contended that the release of the requested information would damage and adversely affect the commercial position of the Government on the on-going work on the Contract for Difference and associated agreements for Hinkley Point C, *'which are still under active discussion in Government and for which final decisions have yet to be taken on Hinkley Point C and other future projects'.*
24. Having had sight of the withheld information in this matter, and the detailed submissions provided by DECC, the Commissioner is satisfied that all the information (the seven reports) are exempt on the basis of regulation 12(5)(e). As the report titles suggest, they contain and discuss matters of a sensitive commercial nature and the information was clearly provided to DECC in the expectation that it would be treated confidentially. Furthermore, it is clear that at the time of the request, disclosure of the information would have harmed the commercial

interests of the Government and NNBG/EDF, for the reasons provided in the Department's detailed submissions to the Commissioner.

### **Public interest test**

25. In keeping with all the EIR exceptions, regulation 12(5)(e) is qualified by a public interest test and therefore the Commissioner must consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the requested information.
26. When determining where the balance of the public interest lies, the Commissioner must consider the circumstances at the time the request was made. A public authority can also only take into account the arguments that are directly relevant to the interests that the exception protects.
27. In his guide to the EIR<sup>6</sup>, the Commissioner advises that in addition to the general public interest in transparency and accountability, there is a further public interest in disclosing environmental information because it supports the right of everyone to live in an adequate environment, and ultimately contributes to a better environment. The importance of openness in relation to environmental information is evidenced by regulation 12(2), which requires a public authority to apply a presumption in favour of disclosure.

### *Public interest arguments in favour of disclosure*

28. In his request to DECC, the complainant put forward a number of public interest arguments in favour of disclosing the requested information. He noted that in its preliminary response to the Government's submission on 31 January 2014, the Commission had stated that the State aid *'would in principle be incompatible under EU state aid rules'* and yet had subsequently reached a different conclusion in its Closing Decision of 8 October 2014. The complainant contended that, *'the public needs full details of how such a profound turnaround occurred given the considerable amount of money they will be expected to find to pay for it'*.

---

<sup>6</sup> <https://ico.org.uk/media/for-organisations/guide-to-the-environmental-information-regulations-2-2.pdf>



29. The complainant stated that:

*'Rough calculations suggest that the undiscounted subsidy over the lifetime of the contract amounts to £37 billion, making it one of the biggest, if not the biggest, subsidy arrangements ever entered into by UK government on behalf of bill and taxpayers. The Financial Times has described Hinkley Point as the 'biggest and most controversial infrastructure project in Europe'. In a time of austerity, people will want to know what, if any, economic considerations the British government took into account'.*

30. The complainant highlighted criticism which the Government had received from some quarters for having guaranteed to EDF a strike price of £92.50 per megawatt hour of electricity (roughly twice the current cost) generated by Hinkley Point C. He noted that this would be, *'a serious burden on energy consumers'*.

31. The complainant contended that:

*'It is well understood that nuclear power has previously failed to be economic. Nor has a nuclear power station ever been built in a genuinely competitive market. Thus there is a public interest in knowing what measures are being taken and with what information to allow it to be built. Wind power is already cheaper than nuclear on land and by 2023, the earliest date a new reactor in England would become operational, other technologies such as solar power will be able to provide electricity at lower cost'.*

32. The complainant referred to the *'justifiable concerns'* over the safety of nuclear energy, with the Fukushima Daiichi nuclear disaster of March 2011 still fresh in the minds of the public. The complainant also highlighted a report which had been sent to clients and investors by analysts at leading investment bank UBS (as reported in The Guardian on 27 August 2014) which predicted that large-scale power stations will soon make way for electric cars and new solar technologies. The report contended that large-scale, centralised power stations will soon (within 10-20 years) become extinct because they are too big and inflexible and are *'not relevant'* for future electricity generation. The Guardian noted that the language used in the report was, *'more closely associated with green NGOS'*.

33. Arguing that the contract for Hinkley Point C would involve subsidy up to 2058 at the earliest, when the technological landscape will look very different from how it does now, the complainant contended that the public *'need to know the extent to which these considerations were taken into account by the UK government and the Commission'*. Given

the above public interest arguments and the presumption in favour of disclosure in regulation 12(2), the complainant contended that all the seven requested documents should be disclosed.

34. In their initial response to the request, DECC provided generic acknowledgement of the public interest in disclosure of environmental information to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views and more effective public participation in environmental decision making, particularly in the area of nuclear power. In the internal review the Department recognised that there is a public interest in information which relates to the Department's commercial activities being disclosed as this ensures that such commercial activities are conducted in an honest and open way.

*Public interest arguments in favour of maintaining the exception*

35. In their detailed submissions to the Commissioner, DECC reiterated the points made in their responses to the request and contended that the disclosure of the information requested, in a particularly high profile area, would make it less likely that companies would provide the Department with commercially sensitive information in the future. *'If the Department does not respect such confidences, its ability to engage meaningfully with companies and other stakeholders would be likely to be prejudiced, resulting in damage to the Department's own commercial interests. This would undermine the ability of the Department to properly fulfil its role in assessing the relevant commercial factors and is contrary to the public interest'.*

36. DECC confirmed that:

*'In this case, we are also satisfied that the release of the information would damage and adversely affect the commercial position of the Government on the on-going work on the Contract for Difference and associated agreements for Hinkley Point C which are still under active discussion in Government and for which final decisions have yet to be taken on Hinkley Point C and other future projects'.*

37. The Department explained that in their consideration of the specific information requested, they had considered both the specific harm that disclosure would cause to the relevant economic interests at stake with regard to the Hinkley Point C project, and the wider public interest in preserving the principle of confidentiality. DECC confirmed their view that the public interest falls in favour of withholding the information requested.

38. Commenting upon the specific public interest attached to the requested information, the Department submitted that:

*'The considerable amount of information about the State aid application already in the public domain through the Commissioner's lengthy Closing Decision, as well as the details of the announcements of the key commercial terms and further agreement with EDF on the contract terms already provides the public with sufficient information to understand the issues and to know the detail of the discussions between the Government and EDF on the proposed contract, which is still being finalised with decisions to be taken by the new Government'.*

39. Specifically, the Department addressed the complainant's public interest arguments in respect of the costs to consumers and taxpayers of the proposed Contract for Difference/proposed guarantee for the Hinkley Point C project, and the costs and benefits of the same. DECC noted that details had been publicly released on 21 October 2013, when commercial agreement was reached on key terms, including the Strike Price, for Hinkley Point C. The Department contended that the publicly released information *'goes some way'* to satisfying the public interest in respect of Hinkley Point C and it would not be in the public interest to release any additional information whilst work to finalise the project was still ongoing.
40. In submissions to the Commissioner, DECC confirmed that any Contract for Difference agreed for Hinkley Point C would be published in line with the requirements of the Energy Act 2013 and they had already committed to publishing summaries of their value for money assessment which will contain references to the information requested. The Department stated their belief that, *'the publication of information in due course in relation to any Contract for Difference which is offered satisfies the public interest for the disclosure of information in this area'.*

#### *Balance of the public interest*

41. There is undoubtedly considerable public interest in the proposals relating to Hinkley Point C. The UK's plans with regard to its energy portfolio will determine how successfully future energy needs can be met and the extent to which the UK can rely on sustainable and renewable energy sources. As reported in the European Commission's published decision, the UK *'made clear in several parts of their submission that the aim of the measure is to incentivise or unlock investments into low-*

*carbon generation, in particular into new nuclear'* (point (i) paragraph 195)<sup>7</sup>

42. The Commissioner considers that the complainant has put forward important and legitimate public interest arguments in favour of disclosing the information requested. The Commissioner recognises that the public interest in transparency and accountability of the information concerned is very strong, not only because of the environmental implications and ramifications of what would be the UK's first nuclear power plant in 20 years, but also because of the financial impact and consequences to UK electricity consumers.
43. The move towards nuclear represents a significant shift in UK energy policy and carries considerable controversy. There are long standing and serious safety concerns with regard to nuclear energy (the Fukushima incident being the most notable in recent years) and the huge cost of dealing with the resultant radioactive waste (the Commissioner notes that as of March 2015 the estimated cost of cleaning up the Sellafield nuclear reprocessing site in Cumbria stands at £53bn<sup>8</sup>). In such a context, it is not surprising that there have been widespread and legitimate calls for greater scrutiny of the UK's decision to commit (with Hinkley Point C) to a state subsidy scheme that has been valued at around £25bn.
44. As the complainant has noted, given that the commitment has been made at a time of austerity and involves a subsidy up to 2058 at the earliest, by which time the technological landscape will in all likelihood look very different from how it does now, there are serious and legitimate questions about the strategic wisdom of the Hinkley Point C project, in terms of its costs and energy efficiency.
45. With regard to its change of position in respect of Hinkley Point C, the Commissioner notes that in its Closing Decision and statement published on 8 October 2014, the Commission said that its positive conclusion was based on modifications made by the UK which meant any undue distortions of competition were avoided and also reduced the public's financial exposure to the project. The Commissioner considers that there is a public interest in knowing more about the concessions made by the UK as part of the Commission's investigatory process.

---

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2015:109:FULL&from=EN>

<sup>8</sup> Figure from National Audit Office report

46. For the reasons set out above, the Commissioner considers that the public interest factors in favour of disclosure of the requested information are strong and compelling.
47. However, central to the determination of the public interest balance in cases of this nature is the timing of the request and at what stage the various commercial negotiations/transactions had reached at that point in time.
48. As noted in paragraph 13, the Commissioner recognises that there have been major recent developments with regard to Hinkley Point C which have attracted considerable media attention and coverage. However, at the time of the complainant's request (28 October 2014), although agreement had been reached between the then Coalition Government and NNBG/EDF on some key terms of the Contract for Difference (most notably the Strike Price), and this information had been placed in the public domain, it is clear that no final investment decision had then been taken and negotiations between the Government and NNBG/EDF remained ongoing.
49. The Commissioner notes that in October 2014, EDF Chief Executive, Henri Proglio, announced that the company planned to take a final investment decision *'around the end of the year'* and the then Secretary of State for Energy and Climate Change, Edward Davey MP, stated that although state aid approval was an important next step, there was, *'much work still to do before a final contract can be signed'*. Given this background of uncertainty, it is clear that the confidential information contained in the requested documents carried particularly high commercial and financial sensitivity with regard to the planned Hinkley Point C project.
50. Companies or third parties which choose to do business with the public sector should recognise and accept that a certain degree of transparency and accountability is commensurate with such business. Any non-disclosure agreements or confidentiality clauses must be drafted and considered with this in mind. However, the Commissioner considers that where companies such as EDF provide sensitive financial or commercial information in a clearly confidential context, they are entitled to expect that that confidentiality will be respected and protected by government, at least until the particular contract or negotiations in question have been finalised or concluded (after which time the commercial sensitivity of such information will usually diminish).
51. At the time of the request EDF have confirmed that NNBG and its supply chain were in ongoing discussions with regard to the key contracts for

the Hinkley Point C project and were also in ongoing discussions with prospective investors. This being the case the information requested was clearly very commercially sensitive and the Commissioner considers that disclosure of the information would adversely affect the commercial interests of both NNBG/EDF in that it would provide commercially and financially sensitive information to their competitors. The Commissioner also accepts that disclosure of the requested information would also adversely affect the legitimate economic interest of the Government in that it would prejudice the confidential negotiations with NNBG/EDF in respect of Hinkley Point C.

52. Whilst the Commissioner considers that claims (by DECC) that disclosure of the specific information requested, *'could be disadvantageous in the context of future negotiations with other developers'* are to some degree speculative, he both recognises and accepts the importance of Government being able to respect and maintain commercial confidences. Failure to do so would inevitably undermine and prejudice meaningful and productive engagement with companies and other stakeholders. Where this would result in the Government being constrained or limited in its ability to fully assess and evaluate the relevant commercial factors of a particular project, the Commissioner considers that this would be against the public interest. With a project as sizable and important as Hinkley Point C, the adverse public interest consequences would be considerable, both in terms of cost to the public purse and energy security.
53. In FS50452436 the Commissioner upheld the use of Section 43(2)(the FOIA equivalent exemption to regulation 12(5)(e)) to sensitive information supplied in confidence by energy companies. The Commissioner recognised the loss of trust that would result from a failure by government officials to protect information provided to them in confidence and the detrimental effect that would have on the ability of departmental officials to operate effectively in the future. In the present case, the Commissioner considers that disclosure of sensitive and confidential commercial/financial information at a time when negotiations and discussions between the Government and NNBG/EDF remained ongoing, would both undermine and damage the Government's efforts to secure the most cost effective agreement in respect of Hinkley Point C. In terms of increasing cost to taxpayers and restricting efforts to secure future energy generation, this would clearly not be in the public interest.



54. The Commissioner is also mindful of the wider impact which disclosure of the information in this case would be likely to have. In the event that the Government (or future governments) should seek to secure other UK partnerships with nuclear operators, its ability to do so would be significantly restricted where the companies in question were unwilling to share and provide confidential commercial and financial information because of a concern that such confidentiality would not be respected (especially during live negotiations or contractual discussions). This would result in a limiting of the Government's energy investment options and put at risk its attempts to guarantee future UK energy security. Neither outcome would be in the public interest.
55. The Commissioner recognises that the Hinkley Point C project (and indeed the Government's support for nuclear energy in general) has attracted considerable criticism from many quarters and is likely to remain controversial for some time to come. At the time of the request, a significant amount of information concerning the project was already in the public domain, including the key commercial terms with EDF and the Commission's lengthy Closing Decision. The Commissioner also notes that DECC has confirmed that any Contract for Difference agreed for Hinkley Point C will be published in accordance with the Energy Act 2013 and the Department has already committed to publishing summaries of their value for money assessment which will reference the specific information requested. The Commissioner considers that the information already available in the public domain and the further information to be provided by the Government in the event of a successful Contract for Difference being agreed for Hinkley Point C, appropriately and proportionately meets the legitimate and important public interest in transparency and accountability of the Government's discussions with EDF.
56. The Commissioner fully recognises that the disclosure of the requested information would provide further and more detailed transparency and accountability in a matter of considerable environmental importance. However, in view of the fact that contractual negotiations and discussions in respect of Hinkley Point C remained live and ongoing at the time of the request, and the adverse consequences which such premature disclosure would have caused, the Commissioner has found that at the time of the request, the balance of the public interest favoured maintaining the exception to the withheld information.
57. Having found that all the withheld information is exempt from disclosure under regulation 12(5)(e) of the EIR, the Commissioner has not gone on to consider the Department's application of the other exceptions.

## Right of appeal

---

58. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

59. 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.
60. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**