

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

Date: 17 October 2022

Public Authority: Department for Business, Energy and Industrial Strategy

Address: 1 Victoria Street
London SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested information to do with the Electricity Generation Costs report. This followed an earlier request. The Department for Business, Energy and Industrial Strategy ("BEIS") relied on EIR regulation 12(4)(b) (manifestly unreasonable on the grounds of cost) as its basis for refusal and maintained this position when the complainant modified his request further.
2. The Commissioner's decision is that BEIS is entitled to rely on EIR regulation 12(4)(b) as its basis for refusing the request.
3. No steps are required.

Request and response

4. On 12 October 2020, the complainant requested information of the following description:

"I am interested in the 2020 Electricity Generation Costs report. I have seen the spreadsheet you have published with the underlying assumptions (GC20_Key_Data_and_Assumptions.xlsx), but I would like a copy of the calculations used to turn these assumptions into the final levelised cost values used in the report."

5. On 23 October 2020, BEIS responded. It provided him with a link which it believed answered his request.

6. The complainant requested an internal review on 27 October 2020. He said that the response provided assumptions and methodology but not the calculations.
7. On 12 November 2020, BEIS sent him the outcome of its internal review. It revised its position. It explained that the levelised cost calculations could not be provided to him because do so would be too costly. It was therefore relying on Regulation 12(4)(b) (manifestly unreasonable on the grounds of cost) as its basis for refusal. It set out some background information to explain why it was, in its view, prohibitively expensive to undertake the work needed to produce this information in response to the request.
8. It said that it would be producing a simplified and redacted version of the Levelised Cost Model ("LCM") "in due course".
9. On 17 November 2020, the complainant revised his request and asked for the following information:

"It will be acceptable for you to simply send the core Levelised cost model at the present time. In other words you do not need to send any subsidiary models."
10. He reiterated this request on 21 December 2020 and 23 December 2020. He wrote again on 9 February 2021 saying

"Please consider this email my requesting for a third time the core spreadsheet behind your levelised cost estimates."
11. BEIS wrote to him on 25 February 2021 stating it had nothing further to add to its letter to the complainant of 12 November 2020.

Scope of the case

12. The complainant contacted the Commissioner on 25 February 2021 to complain about the way his request for information had been handled. Initially, the Commissioner considered the complainant's allegation that BEIS' response may have indicated criminal blocking of the request under section 77 of FOIA¹ based on material he sent with his complaint.

¹ [Freedom of Information Act 2000 - section 77](#)

13. The Commissioner concluded there was insufficient evidence of criminal blocking. However, the material has been considered as part of this investigation into the complainant's allegation of a non-criminal breach of FOIA. This is that BEIS is not entitled to rely on the EIR exception at 12(4)(b) as its basis for refusing to provide "the core spreadsheet behind the levelised cost estimates" [see paragraph 10].

Reasons for decision

14. Regulation 2(1) of the EIR defines environmental information as any information in any material form 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) and (b) 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)'

15. The request in this case is for the core spreadsheet behind the levelised cost estimates in respect of energy generation. This is an economic analysis of measures likely to affect factors which, in turn, affect elements of the environment.

16. The Commissioner is therefore satisfied that the requested information is environmental information and that requests for access to it are caught by EIR rather than FOIA.
17. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be refused as manifestly unreasonable either because it is considered to be vexatious, or on the basis of the burden that it would cause to the public authority.
18. In this case, BEIS argued that responding to the request would impose an unreasonable cost burden on it.
19. It explained by way of background that the "levelised cost of electricity ("LCOE") is a measure of the lifetime cost of building and operating an electricity generation asset. This cost comparison measure between different technologies makes it possible to compare how much it costs to generate one unit of electricity."
20. It added that:

"We regularly publish our estimates of LCOEs on gov.uk² , alongside all our commissioned research and assumptions that goes into the calculation of levelised costs. The 'Electricity Generation Costs Report' is our main publication, which shows the sources for the assumptions, referring to previous reports if there has been no change."
21. It explained that it used several spreadsheets to calculate the costs and provided an indicative model map to show the connection between various cost models e.g., solar, offshore wind and the levelised cost model.
22. It said that each cost model relies on several supporting modules which are updated from commissioned research or other modelling in BEIS.
23. It further explained that the levelised cost calculation itself was straightforward and linked to an industry standard. It provided a link to Wikipedia to explain this point.³

² [Energy generation cost projections - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/energy-generation-cost-projections-2019.pdf)

³ [Levelized cost of electricity - Wikipedia](https://en.wikipedia.org/wiki/Levelized_cost_of_electricity)

24. It went on to explain, however, that “the model below [this is the model referred to above in paragraph 21] in BEIS is significantly more complicated for the following reasons”:

“1. It contains cost and technology assumptions on over 70 technologies, with 8,000 rows of information for each technology, such as insurance costs, specific maintenance costs year on year, etc. It therefore serves not just as a calculator, but as a database of technologies. There are also other data tables in the model that contain information on fuel price and Gross Domestic Product assumptions.

2. There is additional functionality for sensitivity analysis, generating multiple LCOE estimates for comparison, and export to other models within BEIS.

3. The offshore & onshore wind, and solar photo-voltaic cost models are intermediary calculations that feed directly into the database in the levelised cost model. For example, likely construction costs are calculated using wind-turbine sizes taking into account how they will change in the future.”

25. It added:

“Given the complexity of the model, 1-to-1 training sessions are given to those who need to use it. It is difficult to learn without instruction and results can be easily misinterpreted without training.

Importantly, LCOEs are not used in policy-making modelling. LCOEs are a simplified metric which means that not all policy-relevant issues are considered. In practice, more detailed models are used in the Department which make use of the underlying cost and technical. These are published and the approach is set out clearly in Section 3 of the published Electricity Generation Costs Report.”

26. It provided a link to the BEIS Electricity Generation Costs (2020) Report.⁴
27. It then set out four points in support of its reliance on EIR regulation 12(4)(b):

“1. The levelised cost calculation does not hold high weight in the public interest test, as it is not directly used for policy-making. It is instead the

⁴ [BEIS Electricity Generation Costs \(2020\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/beis-electricity-generation-costs-2020)

underlying assumptions (which are published) which are more important.

2. It is possible to follow the methodology indicated in previous FOI responses and the published assumptions and arrive at levelised costs very close to the published numbers.

3. Preparing the current model for release presents a large burden on the Department which would take away from preparing an updated set of assumptions and calculator for release.

4. The Department is currently working on an update to the Electricity Generation Costs Report, which will contain updated assumptions as well as a levelised costs calculator for the public to use."

28. It provided an explanation and a table in response to the Commissioner's questions regarding the time/cost of providing the requested information. The table listed four activities (set out below) it would need to undertake to respond to the request. The table also showed how much time it would take to undertake each activity in respect of four separate cost models (as per the diagram referred to in paragraph 21 above). The time given is shown in square brackets:

"a. Removal of personal information and names throughout the documents, present in comments, notes, etc. [1+1+1+1 = 4 hours]

b. Searching and redacting of commercially sensitive information which has been provided to the Department in confidence or could affect upcoming commercial activities, such as the Contracts for Difference Allocation Rounds. This would need to be done in conjunction with other teams in the Department. These may be considered under EIR 12(5)(e), but we cannot confirm until we have checked the data. [6+2+2+2 = 12 hours]

c. Checking for data linkages to other models in the Department and replacing these with actual data. This would ensure the models work in a "stand alone" mode. [2+2+2+2=8 hours]

d. Quality Assurance of the above activities by another staff member(s)." [2+2+2+2=8 hours]

29. It added a final activity "e. Preparation of model guidance (may not be required under EIR)" but did not provide a calculation for this. BEIS calculated that the total hours required for this would be 32.
30. BEIS acknowledged that this matter was being dealt with under EIR. However, it said that the equivalent provision under FOIA (namely,

section 12) gave the cost limit as being £600 (or 24 hours work x £25/hour) for central government public authorities and that this work would cost $32 \times £25 = £800$. It went on to address the balance of public interest test which applies to EIR regulation 12(4)(b) and this is addressed later in this Notice.

31. It confirmed that this calculation was based on using the quickest method to gather the requested information.
32. In response to the Commissioner's query regarding its previous disclosure of related information to "Individual D" for peer review (the complainant had referred to this in their complaint), BEIS explained that it had disclosed under FOIA information about that peer review but not the information itself. Referring to the information requested in this case which was disclosed to Individual D as part of a peer review (not under FOIA), it explained that BEIS had undertaken several meetings with Individual D to ensure they understood the material. Individual D was also an experienced peer reviewer who had worked with BEIS before and BEIS gave examples of that. It further explained that Individual D was working under a standard contractual agreement which had a confidentiality clause.

Can BEIS engage EIR regulation 12(4)(b)

33. The Commissioner has had regard for his own guidance when considering whether BEIS can engage regulation 12(4)(b).⁵ He notes that a considerable part of BEIS' calculation regarding time relates to the redaction of information either because it is personal data or commercially sensitive data which it may be entitled to withhold (see BEIS' activities at a. and b.). When calculating the cost of compliance under section 12 of FOIA, a public authority cannot take the time for redacting information into account.
34. As the Commissioner explains at paragraph 26 of his guidance:

"Under FOIA the cost of considering whether information is exempt cannot be taken into account under section 12 (the appropriate costs limit) but can be taken into account under section 14(1) (vexatious requests). This is because section 12 limits the activities that can be taken into account when deciding if the appropriate limit would be exceeded. This is not an issue under the EIR. The costs of considering if

⁵ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk/manifestly-unreasonable-requests-regulation-124b)

information is exempt can be taken into account as relevant arguments under regulation 12(4)(b)."

35. The Commissioner accepts the calculations as being reasonable and cogent and notes that they exceed the appropriate costs limit in FOIA section 12. That is not the entire picture and the Commissioner has not reached his conclusion regarding BEIS' ability to engage regulation 12(4)(b) solely on that point.
36. As the Commissioner's guidance further points out, he will take into account
 - the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
37. His guidance also observes that public authorities may be required to accept a greater burden in providing environmental information than it is required to do in respect of other official information. He also recognises that public authorities should reasonably expect to provide some explanatory information to accompany disclosure where that is necessary. He notes that, in the case of this information, BEIS conducts one-to-one training with those about to use this information. This, in the Commissioner's view, goes beyond what could reasonably be required to accompany an already costly disclosure and would create additional burden.
38. He also notes that Individual D has been subject to a contractual obligation to keep information given to them confidential. As disclosure under EIR is disclosure to the world at large, BEIS could not attach a confidentiality clause to any disclosure of this information to the complainant in this case. If it discloses information upon request to one person under EIR it should make the same disclosure to any person thus rendering any confidentiality clause null and void. If the information to which confidentiality has been attached is commercially confidential, the

Commissioner accepts that the cost of redacting that information in the circumstances of this case would be burdensome.

39. The Commissioner acknowledges that BEIS is a large public authority better able to absorb the cost of compliance with a request than others with less resource. The Commissioner also notes that the request does cover a matter of some significance. However, he does not consider these points carry sufficient weight at this stage in his deliberations on this point, namely whether BEIS can engage regulation 12(4)(b) at all. He will, however, consider these points when looking at the balance of public interest.
40. He therefore accepts that BEIS can engage regulation 12(4)(b). The cost of compliance would incur a manifestly unreasonable cost to the public purse.

Balance of public interest

41. Even though the Commissioner has concluded that BEIS can engage regulation 12(4)(b) in respect of this request, that does not mean that it can automatically rely on that exception as its basis for withholding the requested information. Regulation 12(4)(b) (unlike its equivalent in FOIA) is subject to a balance of public interest test.
42. BEIS acknowledged that there was a public interest in the transparency of energy modelling. It asserted that the government was committed to an increasing transparency on this subject and drew attention to the Energy White Paper.
43. BEIS summarised its arguments as follows:

"We believe the existing published information fulfils the public interest test. The material we have made public means that it is possible to replicate the calculations. Energy policy decisions have a direct impact on the country's population, and it is in the public interest to understand how government has arrived at these decisions. However, as BEIS has explained in publications, LCOEs are not part of this decision-making process and do not present any novel information or improve current policy transparency. The published cost and technical assumptions are instead used. Therefore, the extra preparation required to release the levelised cost model and its associated models are not proportional to the increases in benefits to public interest. Our planned works and future publication will increase model transparency. However, this is an extensive programme of work that is unreasonable to carry out in response to this FOI as it will take time to carry out a full update and

creating of a new model.” It provided a link to what it already publishes⁶.

44. The focus of the complainant’s arguments was that BEIS could not argue the response was manifestly unreasonable given that it had supplied this information to another individual. The Commissioner has addressed this point above. However, he recognises that there is a broader and legitimate public interest in understanding as much as possible about the government’s energy policy development.

The Commissioner’s decision

45. As outlined above, the Commissioner is satisfied that providing the information would be manifestly unreasonable on the grounds of cost. He has recognised the public interest in transparency about cost calculations as part of energy policy development. However, he has concluded that the public interest in avoiding a manifestly unreasonable burden upon BEIS is greater. In reaching this view, he has taken into account the fact that BEIS already publishes a great deal of information on this subject.

Advice and assistance

46. Regulation 9 places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner believes that this includes assisting an applicant to refine a request if it is deemed that answering a request would incur an unreasonable cost.
47. The Commissioner therefore asked BEIS to explain what advice and assistance it had provided to the complainant in this case.
48. BEIS set out that it had provided methodology information to the complainant in an earlier request and that it already published assumptions on this point. It said that using the published assumptions and the methodology it had provided, the complainant would arrive at the levelised costs “within a few percentage points of the published figures”.
49. It added:

⁶ [Energy generation cost projections - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344242/energy-generation-cost-projections-2017.pdf)

"The levelised cost calculation is a standard calculation done across industry – following the methodology shown, or using other available online calculators, will allow the complainant to calculate the levelised cost in the way we do."

50. It said that it informed the complainant that it was working on an updated to the Generated Costs Reports and Assumptions and that it would be releasing a simplified version of its levelised cost model with this. It explained that this model would contain just the levelised cost calculation "and not any of the additional functionalities".
51. It concluded its arguments on Regulation 9 by stating that it now planned to release this information at the end of 2022/start of 2023. It added (in support of its argument that responding to the request would present a manifestly unreasonable burden) that this was a major programme of work which would be undertaken by a specific team that had less than two full-time equivalent staff working on it.
52. Taking the above into account, the Commissioner is satisfied that BEIS complied with its obligation under Regulation 9 to provide advice and assistance.

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 <mailto:GRC@hmcts.gsi.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.

Signed

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