

Public

FOI-25-0015

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Dear requester

You requested an internal review of our handling of your information request (reference FOI/25/0015).

This internal review is specific to your information request. We have reviewed the response to determine if we have met the requirements of the Environmental Information Regulations and/or the Freedom of Information Act (FOIA). This is separate from any other complaints processes or enquiries you might be engaged in with us.

Your review has been conducted by [REDACTED], Information Rights and Data Protection Solicitor, who has not been involved in the handling of your request prior to performing this review.

Your request

Commenting on the chosen pathways for electricity generation in 2030, the Clean Power 2030 Report says, "While alternative options could deliver the same outcomes, these options have greater delivery risks." Would you please provide details of the alternative options you considered and your assumptions, analysis and commentary on the delivery risks of the alternatives.

On 30 April 2025, you clarified that your request relates to [NESO's Statement on Government Biomass Announcement](#) (10 February 2025) which includes the sentence "While alternative options could deliver the same outcomes, these options have greater delivery risks."

Our response

We recently responded to a similar request for information (our reference FOI/24/0044), in which we were asked:

NESO recently produced some advice and analysis for DESNZ on the impact on Great Britain's electricity system covering the period 2027 to 2031, if bespoke support for large-scale biomass generation at Drax (2.5 GW capacity) and Lynemouth (0.4 GW capacity) was withdrawn from 2027. The analysis showed that without large-scale biomass, security of supply would not be ensured in scenarios with additional supply losses. While alternative options could deliver the same outcomes, these options have greater delivery risks. The department then announced new policy on 10 February. I am writing to request a full copy of the advice and analysis produced by NESO for DESNZ. Please ensure this includes supplementary annexes and datasets.

We refused this request, applying the exemption at S43(2) of the Freedom of Information Act. The full text of our response is available here: [FOI/24/0044 \(27 March 2025\)](#).

Excerpt from [FOI/24/0044 \(27 March 2025\)](#).

We have determined that your request for 'details of the alternative options you considered and your assumptions, analysis and commentary on the delivery risks of the alternatives' is materially the same as the earlier request for 'a full copy of the advice and analysis produced by NESO for DESNZ'. We therefore advise that the explanation provided in the linked response applies equally to your request i.e., we are applying the exemption at S43(2) of the FOIA and refusing your request.

Your concerns

You set out your concerns as follows:

"You have cited the likelihood of prejudice to a third party's commercial interests and refused disclosure under exemption 43(2). ICO guidance states "When a public authority wants to withhold information on the basis that to disclose the information would or would be likely to prejudice the commercial interests of a third party, it must have evidence that this does in fact represent the concerns of that third party. It is not sufficient for the public authority to speculate on the prejudice which may be caused to the third party by the disclosure."

Please review this decision, and, if you conclude that the exemption under Section 43(2) is upheld, demonstrate stronger evidence that this disclosure 'would, or would be likely to' prejudice the concerns of the third party."

Our review

Firstly, I have looked at whether we applied the correct legislation to your request. We agree with the initial assessment that the information falls within the definition of Freedom of Information Act (FOIA) and are therefore satisfied that the FOIA is the applicable legislation in this case.

The exemption at Section 43 of the FOIA allows us to withhold information where its disclosure would be likely to prejudice the commercial interests of NESO or another party. We are unable to provide more detail than the publicly available information. We consulted with staff at DESNZ as well as with the NESO team that provided the advice, and it is agreed the publication of further detail on the advice provided to Government whilst contractual terms are being negotiated and finalised would be likely to impact on the negotiating positions and commercial interests of the parties. Furthermore, any potential comparable support from Lynemouth is still being considered by DESNZ and the disclosure of the analysis and advice could impact on future discussions with other parties involved in the supply of energy.

Publishing the requested data risks revealing commercially sensitive information to competitors and would undermine the Government's ability to compete effectively in a global market.

The release of this information into the public domain at the time of the request, would be prejudicial to the parties' commercial interests. This is because it contains confidential information, disclosure of the information at the time of the request would be likely to affect market behaviour and reduce the ability of Government to obtain best value for money in addition to affecting the parties' shares and other financial instruments. Disclosure would also damage the parties' commercial interests and ability to secure future investment, partnerships or customers.

There is a public interest in transparency and accountability regarding the public tasks that NESO performs and the security of energy supply. NESO also acknowledges that there is a public interest in furthering public understanding of the supply of energy, the use of renewable energy sources, and the cost of energy to consumers. NESO has a duty under its license to facilitate competition in the energy sector, to ensure that market participants are able to compete fairly, and to ensure competitive pricing in order to reduce costs to consumers.

It is not however, in the public interest for the market competition to be distorted by disclosures of confidential, commercially sensitive information relating to the commercial interests of a limited number of market participants which would disadvantage them and provide a competitive and commercial leverage to other participants in the energy market. This would, in turn, be likely to distort what should be, an efficient competitive market to the detriment of all parties and ultimately the consumer

The need to protect the security of supply from outside forces including but not limited to state attacks and or distortion of market prices and or participants that may gain a commercial leverage is of paramount importance, disclosure is therefore not in the public interest.

I am upholding our original response and reliance upon s43(2) of the FOIA for the reasons stated above and in our original response.

Ofgem is responsible for regulating the licensed activities of NESO and has a wider regulatory role within the energy sector: [Welcome to Ofgem | Ofgem](#). You can submit enquiries to Ofgem and make requests under the Freedom of Information Act and Environmental Information Regulations [Contact us | Ofgem](#).

Next steps

If you still feel that we have not responded appropriately to your information request, you can complain to the Information Commissioner's Office (ICO). You should make complaints to the ICO within six weeks of receiving the outcome of an internal review. The easiest way to lodge a complaint is through their website: www.ico.org.uk/foicomplaints. Alternatively, they can be contacted at Wycliffe House, Water Lane, Wilmslow, SK9 5AF.

Yours sincerely,



National Energy System Operator (NESO)

