



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: ATISN 15586

8 November 2021

Dear

## **ATISN 15586 – Uskmouth Power Station Permits**

### **Information requested**

Thank you for your request which I received on 11 October. You asked for:

- a) All correspondence and reports between WG and NRW and stakeholders related to NRW permit variation application PAN-008534, Permit variation application LP3131SW V003 Draft SUP pre-final copy, MA/JJ/3346/21.
- b) All correspondence and reports between WG and NRW and stakeholders related to the legal review and associated correspondence related to PAN-008534 that informed the *Direction issued by the Welsh Ministers to the Natural Resources Body for Wales: application by SIMEC Uskmouth Power Ltd. to vary an environmental permit pursuant to the Environmental Permitting (England and Wales) Regulations 2016.*

### **Our response**

A copy of the information is enclosed.

I have decided that some of the information is exempt from disclosure under section 40(2) of the Freedom of Information Act and regulation 12(3) and 13 of the Environmental Information Regulations and is therefore withheld. The reasons for applying these exemptions/exception are set out in full below.

### **Engagement of FOIA Section 40(2) and EIR Regulation 12(3) and 13 – Personal Data**

In the correspondence I am releasing to you, I have identified personal data that is exempt from disclosure based on an exception provided by the Environmental Information Regulations 2004 (EIRs):

- (i) Regulation 12(3) and 13 – Personal data
- (ii) Regulation 12(5)(d) "...a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law".

And also, where the information does not relate to environmental information, under FOIA Section 40(2) which states personal information is exempt if:

**40 Personal information.**

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and
- (b) the first, second or third condition below is satisfied.

And;

The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles

This personal data is the names and identifying information of correspondents where the identity of the correspondents is not in the public domain, and where they would have had no expectation that their information would be placed in the public domain.

I have considered the public interest test when applying the exceptions and have balanced the arguments for withholding the information against the public interest to disclose the information.

Taking into account the above exemptions/exceptions regarding personal data, we have taken the view that it is not in the interest of the public to release this information as the identity of the correspondents does not materially alter the nature of the correspondence, nor is there a clear public interest in the disclosure of the names. Disclosure would be unfair to those named, which would breach the first data protection principle.

I have redacted the names of correspondents and officials from the information I am disclosing.

We consider that the names of these individuals clearly fall within the description of personal data as defined by the Data Protection Act (DPA) and that disclosure would breach the first data protection principle. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (ICO) (Personal information regulation 13) v 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *If disclosure would not be fair, then the information is exempt from disclosure. This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:  
"The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA" (paragraph 63).*

## **Next steps**

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,  
Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

or Email: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,

SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,