

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 June 2020

Public Authority: Scottish Power Energy Networks
Address: 10 Ochil House
Technology Avenue
Blantyre
Glasgow G72 0HT

Decision (including any steps ordered)

1. The complainant has requested information from Scottish Power Energy Networks ("SPEN") relating to the Kype Muir wind farm power cable project. SPEN provided a quantity of information over a period of time but withheld some information under the exceptions at Regulations 12(4)(a), 12(4)(c) and later 12(5)(e).
2. The Commissioner's decision is that SPEN has correctly cited the exception at 12(4)(a) and that, on the balance of probability, no information is held. She also accepts that the exception at 12(5)(e) is engaged and that the balance of the public interest favours maintaining non-disclosure. The Commissioner does not accept that the exception at 12(4)(c) is engaged but has reached the conclusion that there is no further information to be disclosed.
3. The Commissioner does not require SPEN to take any further steps.

Background

4. SPEN has explained that its name is the trading name for Scottish Power Energy Network Holdings Limited, SPEN is the

public authority which owns and operates the electricity transmission and distribution networks in central and southern Scotland through its wholly-owned subsidiaries SP Transmission plc (SPT) and SP Distribution plc.

Request and response

5. On 19 February 2018, the complainant submitted an information request to SPEN in the form of a series of questions:

"...According to your document 'Major Electrical Infrastructure Projects – Approach to Routeing and Environmental Impact Assessment' (your document)... (3) Do you agree that the KM power cable project falls within the scope of your document? (4) Do you agree that [personal information details], with an 'interest in your infrastructure', I am entitled to use and rely on your document? (5) Do you agree that your company staff should be operating in accordance with your document? (6) Do you agree that the Scottish Government and Banks are entitled to rely on your company operating in accordance with your document? (7) Have your company staff used your document for the KM power cable project through Boghead?... (8) Since your preference is for an overhead route, could you please explain why you are not using an overhead route to connect KM to the grid? (9) Could you provide details on all the specific circumstances in which you consider an underground approach?...10) For the KM cable project what steps did you take to establish the 'wider publics' view of your proposed route? ... (11) For the KM cable project what steps did you take to engage with local communities of your proposed route? (12) Since the Boghead community is clearly affected by the KM power cable project, what steps did you take to engage with the Boghead community before deciding the route through Boghead? Please give all possible detail for this. ... (13) Do you agree that you have not complied with your own published guidance in regard to the KM power cable project? (14) Specifically, do you agree that you have not complied with your own published guidance in engaging with the community of Boghead before deciding the route through Boghead? I see that for projects below the requirement for a full Environmental Impact Assessment that you produce an Environmental Report. (15) Can you supply a copy of your Environmental Report for the KM cable project? I note, in para 4.3 of your document, you specify that "a double circuit 400kV cables requires a trench

and working area of up to 30m wide". (16) Can you provide the 'up to width working area' for a 132,000 volts cable? Your field team carrying out the KM power cable project first contacted residents in Boghead in late September 2017. (17) Do you accept that this was your first contact with residents in Boghead regarding the KM power cable project? (18) Do you accept that this first contact was after you had decided the route for the KM power cable project? At no point in the official normal communications did your field team inform us of the size of the cable. It was clearly your field team's intention was to leave us with a false impression and to keep us in the dark on the size of the cable. Only through our own research did we discover the size of the cable. (19) Why did your field team not act with transparency and why were we not told from the outset of your communications about the size of the cable?... I am now informed by the HSE that you have a duty of care to the public (section 3 of Health & Safety at Work Act), that you are "required to undertake a suitable and sufficient risk assessment" and that this we are entitled to obtain a copy of your risk assessment. (20) Will you now provide a copy of your risk assessment for the KM cable project? (21) Why were we denied a copy of the risk assessment when first requested on 13 November?..."

6. This request was subsequently the subject of a decision notice [FER0809814](#) which required the public authority to respond to the complainant in compliance with the EIR and concluded that it had contravened Regulation 5(1) and 5(2) of the EIR.
7. After the Commissioner's decision notice, SPEN responded to the complainant on 14 August 2019. In that response it provided information and did not cite any exceptions.
8. On 4 October 2019 the complainant made a review request, parts of which were treated by SPEN as a new request, though the complainant believed that he was just eliciting further explanation of the response he had received. As it is so detailed, it is reproduced in an annex at the end of this decision notice.
9. On 31 October 2019, SPEN provided its internal review response. In this response SPEN stated that it had complied with the complainant's original request regarding questions 7, 8, 9, 10, 11, 12, and 14. SPEN confirmed that some information was not held - Part four of question 7 (the environmental report) and question 15 (SPEN explained that it had failed to confirm that it did not hold the information requested in the

complainant's 19 February 2018 request). The review response also explained that it did not consider questions 13, 18, 19 and 21 from the original request to be requests under the EIR. What SPEN considered to be new requests under questions 8, 9, 10, 11, 12, 13, 14, 18, 19 and 21 were formulated in too general a manner and the complainant was invited to clarify.

10. Due to what SPEN considered the complexity and volume required to respond to his comments regarding question 7 it did not provide a response in the review.
11. SPEN therefore produced another response on 28 November 2019 in which it set out what it saw as the new requests from the comments he had made about question 7 as follows:

Details of the alternative routes considered.

Documents detailing how these alternative routes were assessed against the criteria set out in Approach to Routeing; and

How SPEN balanced 'consideration of technical and economic viability, deliverability and environmental effects' in relation to these.

12. Further information relating to part one of the new request was provided and the public authority stated that the information was not held in relation to the second and third parts of the new request under the exception at Regulation 12(4)(a).
13. Additionally SPEN stated that it had not complied with question 20 of the complainant's original request for the risk assessment for the KM power cable project and consequently provided the information it held.

Scope of the case

14. The complainant contacted the Commissioner on 24 October 2019 to complain about the way his request for information had been handled.
15. On 12 February 2020 the Commissioner wrote to the complainant asking him to confirm that it was solely regulation 12(4)(a) and 12(4)(c) that he wished the Commissioner to consider within the scope of the request. Later, SPEN cited Regulation 12(5)(e) which was then included in the investigation and the scope of the request.

16. The complainant responded on 20 April 2020 disagreeing with the scope of the request as defined by the Commissioner. His view was that the Commissioner had scope to look at the Nolan principles and whether SPEN had followed its own guidelines as set out in its A2R document.
17. On 21 February 2020, the Commissioner wrote back explaining that the ICO cannot look at whether SPEN followed its own guidelines. In other words, she would not look at A2R and compare what SPEN has said in its responses to see if it had followed that guidance because how an organisation like SPEN carries out its duties is not regulated by the ICO. The Commissioner can, however, look at whether the information the complainant was seeking was held and, if so, whether he had been provided with that information and if the exceptions had been applied appropriately. In the same correspondence she asked the complainant to provide the numbers of the questions where he did not accept that he had received the information he had requested.
18. The complainant provided these numbers to the Commissioner on 26 February 2020. In the same correspondence he reiterated his view that the ICO was responsible for promoting good practice and that he believed that part of that duty lay in ensuring that public authorities provided accurate information.
19. On 9 March 2020, SPEN wrote again to the complainant providing two documents, Issues 1 and 2 of "IP2" '*Technical Governance Process: Project Technical Approval IP 2*'. Issue 1 should have been provided previously and Issue 2 (which had been previously provided) was revised because information in the document had been redacted where the original document had just contained a blank space. Apart from minor redactions of personal data which were not disputed by the complainant, SPEN withheld some financial information under regulation 12(5)(e).
20. The Commissioner has had several discussions with the complainant regarding her remit, explaining that her role was to uphold information rights but that she did not check the accuracy of the information a public authority provides, only whether it had complied appropriately to the request.
21. Whilst the complainant differs in his interpretation of the Commissioner's role, the scope of the case remains whether SPEN responded appropriately in applying Regulations 12(4)(a) – information not held, 12(5)(e) – commercial or industrial

information and 12(4)(c) - requests formulated in too general a manner.

22. There is considerable correspondence between the complainant and SPEN. The complainant had previously brought a complaint to the Commissioner concerning procedural breaches in relation to his first request, as set out in paragraph six of this decision notice. She therefore does not intend to consider this matter further.
23. The ongoing correspondence which led to what SPEN classed as a second request has blurred the parameters of time for compliance and led to an ongoing correspondence containing responses to 'new' requests whilst revisiting the old request which has resulted in a steady drip of information. Unsatisfactory as this may be, the Commissioner does not intend to look at procedural breaches beyond those she has previously recorded.

Reasons for decision

Regulation 12(4)(a) – information not held

24. Regulation 12(4)(a) says that an authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
25. SPEN has specifically cited Regulation 12(4)(a) in relation to part 4 of question 7 and question 15. However, the complainant believes that SPEN holds more information than has been provided in relation to questions 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 21. Some of these parts of the second request are clearly questions which contain opinions.
26. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner asked a series of questions, in order to establish whether SPEN had conducted thorough searches in order to establish that it had located all the information that

fell within the scope of the request and to establish that it did not hold information it had cited under this regulation.

27. SPEN responded by explaining that it stores information relating to its projects (in this case the KM power cable project) electronically in two document databases known as 'SharePoint' and 'ProjectWise'. All information (including environmental information) relating to projects undertaken by SPEN which is held, is stored in these two databases. Additionally, contractual documents governing SPEN's projects, such as Transmission Operator Construction Agreements ("TOCA") are stored in a database known as the 'Commercial Drive'.
28. The database known as SharePoint is used to store formal approval Investment Process documents relating to SPEN's projects. Documents stored in the SharePoint database are sensitive and important documents relating to the investment and technical approvals which govern the scope of projects. These documents are project-specific, and are created and approved by the appropriate management committee within SPEN. They are not created on an ad-hoc basis by individual employees. The SharePoint database allows for free-text searches for key words to be undertaken. SPEN staff familiar with the internal SPEN approval processes and the content of the SharePoint database are able to quickly locate the documents relating to a particular project. SPEN staff undertaking a search can be certain that all information (including environmental information) relating to the particular project has been disclosed by their searches.
29. SPEN explained that the database known as ProjectWise is used to store a wide range of documents relating to projects undertaken by it, with the exception of the documents stored in the SharePoint database. The ProjectWise database is routinely used by the SPEN project teams. It is used to store internal documents, as well as documents prepared by contractors appointed by SPEN to undertake works required to deliver a particular project. This arrangement allows SPEN to ensure that all documents containing information relating to a particular project are held in one central location (with the exception of the documents which are stored in the SharePoint database) and can be retrieved if necessary, subject to the general document retention policy. The ProjectWise database is a folders-based system. Separate folders are used for every project. Every main project is assigned a specific project code, and code "1AT3" refers to the KM power cable project. Further sub-folders are used to store different types of documents relating to particular projects. These sub-folders contain all

documents (including documents containing environmental information) prepared by SPEN as well as its contractors responsible for delivery of the projects. SPEN staff responsible for a particular project are able to access and review all of the content of the relevant project folder in this database.

30. The database 'Commercial Drive' is used to store TOCAs and other contractual documents governing SPEN's projects. These include contractual arrangements between SPEN and the National Grid Electricity System Operator ("NGESO"). In a similar fashion to the documents stored in the SharePoint database, the documents stored in the 'Commercial Drive' database are project-specific and are not created on an ad-hoc basis by individual employees. Contractual documents relating to particular projects are stored in the 'Commercial Drive' database, in dedicated folders specific for each project. Searches were undertaken by SPEN in relation to the complainant's requests for environmental information.
31. SPEN explained that both the SharePoint and ProjectWise databases were thoroughly reviewed to locate all relevant environmental information requested by the complainant. Additionally, the 'Commercial Drive' database was thoroughly reviewed in relation to the complainant's requests relating to environmental information forming part of contractual documents.
32. SPEN outlined the process by which an employee who was responsible for the delivery of the project undertook the searches in relation to each of the requests. In addition to searching SharePoint and ProjectWise databases the employee consulted the colleagues who were responsible for certain aspects of the KM power cable project to check if they were aware of any additional environmental information held that had been requested by the complainant. It was confirmed that all the information was stored in the databases already reviewed.
33. SPEN explained that the employee was selected to locate the environmental information requested by the complainant because of his familiarity with the KM power cable project, the SharePoint and the ProjectWise databases and the content of the KM power cable project folder in the 'Commercial Drive'. His knowledge and experience allowed SPEN to have confidence that all of the environmental information requested by the complainant and held by SPEN had been located and provided to the complainant. Equally, where the searches of SharePoint,

'Commercial Drive' and the ProjectWise databases and the staff consultation undertaken by the employee revealed no relevant environmental information, SPEN was able to determine that the requested environmental information was not held.

34. SPEN listed the search terms used as requested by the Commissioner – "'KM' – the name of the KM power cable project; 'TOCO*147' (reference number 147 assigned by SPEN to the TOCA arrangements between SPEN and the NGESO relating to the KM wind farm, and used to identify the relevant TOCA documents in the 'Commercial Drive' database); and - 1AT3 (code assigned to the KM power cable project, used to identify the project documents in the ProjectWise database). These searches produced '*Technical Governance Process: Project Technical Approval IP2*' which was provided in a redacted form to the complainant.
35. Searches of the ProjectWise database were reviewed in relation to the request/s. The KM power cable project folder was reviewed (including the sub-folders) in relation to all relevant requests the complainant made and they were provided to him as appendices.
36. Similarly, SPEN explained that the 'Commercial Drive' folder has a dedicated project folder and was reviewed in the same way as outlined in the previous paragraphs. Any relevant documents were provided as appendices in SPEN's correspondence with the complainant.
37. SPEN also reviewed its responses when it was considering new requests that are not part of this decision notice. The review process meant that SPEN examined its original requests and the responses it had provided. Searches were repeated and overseen with the presumption in favour of disclosure. In limited cases it was concluded that it had not complied with the EIR and the information was immediately disclosed.
38. Responding to the Commissioner's questions, SPEN informed her that its email systems automatically delete emails older than eighteen months, in line with its deletion policy. Older emails in the ProjectWise database may not be deleted if they relate to a particular project. Individual email accounts were not reviewed because SPEN consider that any information falling within scope would be stored in the databases already outlined, as information relating to projects is not stored locally on individual electronic devices or manually. SPEN confirmed that

environmental information relating to the KM power cable project has not been destroyed.

39. SPEN is subject to strict legal and regulatory compliance obligations which can overlap and information has to be retained for these reasons. There is an obligation to comply with the Electricity Act 1989 and a range of duties through its conditions of licence. The retention of certain information is mandatory - investment, technical approvals and contractual arrangements. The complainant's requests fall into different categories where retention is not always mandatory such as those that relate to public engagement but they are held as a matter of good policy.
40. The Commissioner also asked specific questions about the numbered parts of the request where the complainant did not accept that he had received a full response and had explained his reasons for maintaining this view. SPEN outlined what specific responses and comments it had made concerning request numbers 7, 8, 9, 10, 11, 12, 13, 14 18 and 20 and that there was no further information held that had not been provided to the complainant.
41. Amongst the very specific points the Commissioner raised was a point the complainant made about why he believed the information to be incomplete. He queried why there were no emails, drawings, letters and documents which were used to arrive at and contribute to the professional judgement. He also queried why the document 29/11/19-02 (Technical Governance Process) had included redacted information without any exception having been applied. SPEN confirmed that it did not hold any other information than had already been provided. SPEN also accepted that it had not explained the reasons why it had made these redactions which will be discussed later in this decision notice under Regulation 12(5)(e).
42. The Commissioner wrote to the complainant outlining SPEN's response. However, he does not accept that SPEN has provided the information he requested for the reasons set out below.
43. The complainant describes SPEN's use of directories as "*pretty standard practice*" as it is used to ensure that management keeps what is essential; that important external contracts are separate; and that everything else is in the project drive. However, he questions whether "*everything else*" is put in the project drive. There is no assurance that less important

documents are stored in the first place. He suggests that SPEN has not looked for information in staff email accounts because information should not be kept there. The focus is to ensure that the management and investment process documents are stored. He states that the project documents are not really important as management does not need them.

44. The complainant points out that there is another flaw in SPEN's dependence on recovering the information by the staff responsible for delivering the project. To do so, means that these individuals might need to expose their own deficiencies and that the request should have been handled by more senior management or a specialist who was aware of the regulatory pitfalls.
45. The complainant argues that the Commissioner should not look at the process but at the results that emerged from it. He underpins his argument by stating that SPEN showed no documentary evidence of how it had decided the cable route. Nothing SPEN provided shows what factors they evaluated when deciding the cable route was the best option. Logically, he suggests, they must have given some thought to this. His view is that the information has not been provided. Even had it been decided in a casual informal way SPEN must have needed to consult maps, drive along the route taking notes on potential problems. The complainant states that there is nothing that predates the choice of route or that records a conscious choice being made. If there is no such information, SPEN was negligent.
46. Finally, the complainant points to SPEN's 28 November 2019 letter where 80 documents were enclosed that should have been provided earlier. This occurred because staff had presumed what was being requested rather than responding to what was actually requested. He also points to later disclosures that are not part of this decision where information has been provided in response to a follow-up request which he believes should have been provided as part of his original request. The complainant's view is that the information is conspicuously incomplete. He asserts that the balance of probability is that there is more information and that if the KM project had been audited and had fallen within its three assurance standards, the Commissioner could be satisfied that SPEN did not hold any further information.

The Commissioner's view

47. Technically, Regulation 12(4)(a) of the EIR is subject to the public interest test. However, the Commissioner considers this is an unnecessary exercise where she has found that a public authority did not hold the requested information at the time of the request. The Commissioner cannot consider the public interest factors for and against disclosure when she has found that there is no recorded information held for potential disclosure.
48. The complainant has made many cogent points to underpin the fact that he is dubious that he has been provided with what he requested by SPEN. The Commissioner has considered these points. Firstly, the Commissioner would have expected SPEN to check individual email accounts but this was not done because SPEN's procedures do not allow for the type of information falling within scope of the request to be held in this way. There is, of course, a possibility that some relevant information is held in individual email accounts against policy. However, this is likely to be an academic point now as any relevant emails will have been deleted if SPEN's deletion policy was being adhered to.
49. SPEN relied on those members of staff with a detailed knowledge of the project. Although this method could be criticised for its lack of objectivity, the necessary searches were undertaken in clearly defined areas relating to the KM project and these searches were carried out several times and checked by other individuals during the course of a copious correspondence.
50. The Commissioner is unable to consider whether SPEN met audit standards in matters unrelated to information rights. She cannot factor in whether individuals may not have wished to expose their own deficiencies as this will always be a possibility in any type of investigation of this nature. The complainant has made a very relevant point that information has been provided later than it should have been and that errors have occurred. Some of the confusion can be attributed to the fact that the scope of the requests was not clear from the outset because what were actual requests was not clarified between the parties.

51. Nonetheless, SPEN has provided the Commissioner with a very detailed response and she has no reason to suppose that the complainant has not, by this stage, been provided with all the information held. SPEN has acknowledged its errors along the way and attempted to rectify them, emphasising that its default position is to disclose environmental information. The Commissioner can only decide on the balance of probability. The complainant has suggested that information should be held because of his extensive knowledge of the subject. There must be a question mark raised over some aspects of SPEN's response, such as what the complainant has highlighted as the absence of information predating the choice of route having been made. The Commissioner has addressed these issues in detail and SPEN has reiterated that there is no further information held within the scope of the request that has not been provided. Without evidence to the contrary, she has determined that, on the balance of probability, there is no further information held.

Regulation 12(4)(c) of the EIR – Formulated in too general a manner

52. Regulation 12(4)(c) of the EIR states that:

*"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-
(c) the request for information is formulated in too general a manner and the public authority has complied with regulation."*

53. The Commissioner has considered SPEN's application of Regulation 12(4)(c) that the request was formulated in too general a manner in relation to request numbers 8, 9, 10, 11, 12, 13, 14, 18, 19 and 21.
54. The Commissioner agrees with the complainant that he wanted clarification regarding SPEN's responses and was anticipating a review. The review request and the comments made were then treated as new requests when he did not intend to make further requests. SPEN also acknowledges this.
55. Having treated his comments/clarifications as 'new requests' SPEN decided that the public interest in refusing them outweighed the public interest in disclosing "*unwanted information*" which "*could cause more delay and confusion*". Therefore SPEN asked for clarification. SPEN determined that the public interest in refusing disclosure and seeking to clarify

the complainant's requests outweighed the public interest in disclosure of what could easily have been incorrect/unwanted information potentially causing further confusion. SPEN explained that this was especially important given the complexity and amount of information relating to the KM power cable project which had already been provided to the complainant.

56. The Commissioner asked SPEN for evidence that it had complied with its obligations under Regulation 9(2) to assist the complainant in refining his request. SPEN highlighted its October 2019 letter to him and Appendix 2, entry c) of the fourth column of the table. Here SPEN explained that it offered explicit advice and suggested how particular requests could be clarified and argued that this was "*especially important given the complexity and amount of information relating to the KM power cable project which has already been provided to the complainant*".
57. The public authority stated several times that a representative had also offered to speak to the complainant.
58. This is a particularly complex complaint due to the quantity of correspondence that has passed between the complainant and SPEN. The parts of the complainant's correspondence where SPEN cited regulation 12(4)(c) were general but the Commissioner is not persuaded that they were intended to be new requests but rather a commentary on the response to his first request and numbered accordingly. These comments all state that SPEN has not complied with its own guidance and that the information he requested had not been provided.
59. Therefore, the Commissioner finds that the exception is not engaged. For this reason she has not gone on to consider the public interest. She has also not gone on to order SPEN to disclose any information in relation to the citing of this exception because she has already made a decision earlier in this notice regarding what SPEN holds in relation to the request.

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

60. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect,

"the confidentiality of commercial or industrial

information where such confidentiality is provided by law to protect a legitimate economic interest”.

61. This exception was applied to the withholding of financial details in Issue 1 and Issue 2 of the IP2 document. The redacted information consists of SPEN's expenditure and the customer's specific contribution values towards the costs of the project. SPEN accepts that there is public interest in understanding the cost of electricity transmission connections.
62. SPEN provided the withheld information to the Commissioner and explained why it had redacted some of the content of IP2. SPEN asked that it be considered in the context of the complex relationship between SPEN and NGEN and SPEN's duties as a holder of a licence to transmit electricity in line with the Electricity Act 1989. The same considerations apply to Issue 1 and Issue 2 of IP2 (see paragraph 34). SPEN had taken extra time to allow it to consult NGEN in relation to the document.
63. Following careful consideration about whether the redacted information should be disclosed and after consultation with NGEN, SPEN considers that it has appropriately redacted certain commercial information forming part of Issues 1 and 2 of IP2. Issue 1 was subject to the same redaction as the revised version of Issue 2 of IP2. SPEN argues that the information which has been redacted in Issue 1 and Issue 2 of the IP2 should be withheld to protect the confidentiality of commercial information provided by law to protect legitimate economic interests.
64. There are several conditions that need to be met for this exception to be applicable. They are as follows -
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

65. SPEN explains that the redacted information relates to financial matters associated with the KM power cable project. In particular, it relates to the charge to be made by SPEN to provide an underground cable connection and the customer's contribution to the cost of these works. Information relating to the cost of provision of a grid connection and the liability for such cost for the KM wind farm is commercial in nature. The provision of grid connections is a service undertaken for profit.

66. SPEN is subject to certain obligations under its transmission licence. One of these is the obligation to enter into agreements with NGENSO for new connections to its transmission system (Transmission Standard Licence Conditions D4A). This includes the carrying out of works on SPEN's transmission system considered appropriate or necessary by reason of making the connection to the national electricity transmission system and obtaining any consents necessary for such purpose. Consents in this context include both statutory consents and land rights.
67. Additionally, SPEN as a provider of grid connections is subject to duties under the Electricity Act 1989. These include the duty to develop and maintain an efficiently co-ordinated and economical system of electricity transmission. SPEN must comply with the code in terms of its licence (Transmission Standard Licence Conditions B12). The duty to ensure that the transmission system is developed and maintained in an economic and efficient manner is to protect consumers in Great Britain from excessive costs.
68. The provision of grid connections is a service undertaken for profit, within the parameters approved by Ofgem. In this case, the provision of the grid connection is governed by SPT's transmission licence, the System Operator Transmission Owner Code, and the TOCA entered into between SPEN and NGENSO under the System Operator Transmission Owner Code. These documents regulate the arrangements for connection of the KM wind farm to the electricity transmission system.

Is the information subject to confidentiality provided by law?

69. The redacted information relates to financial matters associated with the KM power cable project, including SPEN's expenditure and the customer's financial contribution towards it. This information is important to SPEN, to NGENSO and electricity generators. The information includes the payment which a generator will make towards securing its connection, in this case by means of an underground rather than overhead line solution. This information is not trivial in nature. SPEN is not under a duty to publicise the redacted information. On the contrary, SPEN explains that it is under a range of obligations to keep the redacted information confidential and it lists them as -

- The Transmission Licence, Special Condition 2B. Restriction on the use of certain information, provides for a range of restrictions on the disclosure of information relating to SPEN's transmission business.
- The System Operator Transmission Owner Code contains a prohibition at section F on the disclosure of "*Confidential Information*" that is to say "*all data and information relating to the*

affairs of a Party or User supplied to it or its Business under the provisions of this Code or any TO Construction Agreement..."

NGESO is a "Party" and KM wind farm is a "User". SPEN must comply with this provision as a matter of law, in terms of its Transmission Licence, and also as a matter of contract to NGESO as system operator.

- The TOCA relating to the KM wind farm expressly prohibits SPEN from publicising the redacted information.
70. SPEN stresses that these obligations are not self-imposed and that they are regulatory obligations, which are requirements under the transmission licence, granted or treated as granted under the Electricity Act 1989. These obligations are subject to the regime under that legislation which provides for investigations and enforcement by Ofgem. They are also contractual obligations which cannot be excluded from contractual arrangements for provision of a network connection to an electricity generator.
71. It should also be noted that the contractual arrangements between KM wind farm and NGESO are also subject to confidentiality obligations set out in the Connection and Use of System Code and associated documents. NGESO must comply with these arrangements in terms of its transmission licence. The Commissioner understands that SPEN must comply with these arrangements as a matter of contractual duty owed to KM wind farm.
72. The confidentiality obligations applicable to the redacted information provide protection for the interests of SPEN and NGESO, as well as the electricity generator. Whilst the redacted information has been shared with employees of these organisations, it was provided in the course of their employment in circumstances creating an obligation of confidence.
73. The Commissioner accepts that there is legislation that prohibits confidential information being disclosed by SPEN. Whilst this might satisfy the condition that confidentiality is provided by law, it is not, in itself, justification for withholding the information. All the conditions listed in paragraph 64 have to be satisfied and the public interest test needs to be applied.
74. The complainant does not agree that the information is confidential. He argues that information that is in the public domain does not retain confidentiality. As the provision of the KM power cable is a statutory obligation SPEN are accountable as a public authority. SPEN made a decision on the route selection, involving economic cost benefit and assessment of environmental consequences. In his view this is clearly a public

domain activity. As the TOCA (SPEN 4/6/20-1) shows SPEN provides this power cable under contract with another public body (National Grid). In respect of the potential confidentiality of the end user, it does not apply. The wind farm has been developed with public financial subsidy. Any related activity is therefore open to public scrutiny. In any event, plenty of financial information about the project and similar projects is in the public domain. The complainant states that it can be found via the National Grid. The formula for connection and other charges can be found in 'TNUoS Guidance for Generators' (April 2019). The industry operates through Ofgem regulated Codes, available from National Grid. There is a spreadsheet of the actual grid connection charges for every electricity power station in the UK. He provides the example of KM Wind Farm paying £1.462492/kW this year for the Local Circuit Tariff and receives a Small Generator Discount of £11.102227/kW. KM Wind Farm has a TEC of 99.9mW. This TEC factor is multiplied to give the actual charge for the KM grid connection each year. The complainant states that the industry understands that this information is all in the public domain.

75. The Commissioner's guidance, however, states that "*...information can keep its quality of confidence even if it is all in the public domain, if it would take time and effort to collate it from multiple sources*"¹. The Commissioner has no reason to disbelieve the complainant that some related information is in the public domain, though it seems reasonable to assume that it would require a degree of knowledge and expertise to extract and calculate that information from a variety of documents. Additionally, the Commissioner understands from SPEN's responses that the very specific financial figures contained in IP2 such as the total customer contribution and the one-off charge are not in the public domain, otherwise there is no reason for SPEN to be withholding them.

Is the confidentiality provided to protect a legitimate economic interest?

76. The redacted information relates to the costs of connection of the KM Wind Farm to the electricity transmission system. As a transmission licence holder, SPEN is under a statutory duty to facilitate competition in the supply and generation of electricity. This duty is imposed (amongst

¹ https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

others) to manage the costs of the provision of electricity and operation of the electricity transmission system for the benefit of consumers.

77. Compliance with this duty is subject to the Electricity Act 1989 enforcement regime, which provides for investigations and enforcement action by Ofgem. SPEN points out that a critical background fact is that electricity consumers pay for the transmission system via their electricity bills.
78. SPEN states that the confidentiality regime allows for open discussions between the parties involved in the provision of the connection for a particular project (including in this case SPEN as the transmission owner, NGENSO, and the electricity generator). It contends that openness and transparency between the relevant parties better facilitates the discharge of SPEN's significant regulatory duties as a transmission system operator. SPEN argues that if generators and the system operator perceived that there was a high risk of disclosure of information, then the relevant parties would be more reluctant to share that information. It describes this as one of the benefits of the strict regime of confidentiality in this context.
79. SPEN's view is that disclosure of the redacted information would damage the interests of SPEN as a holder of transmission licence, as it would be detrimental to their position in discussions relating to current and future network connection projects. By way of illustration, in the first instance, SPEN proposed the lowest cost connection for KM wind farm. This involved an overhead line over private property which is often the subject of objection. The ultimate customer, KM wind farm wanted a connection that was quicker and which provided greater programme certainty. In order to secure a quicker connection, the decision was taken to route the connection under a public road. This is because it would involve a need for less negotiations with landowners and SPEN has rights to install cables in public roads. This was more expensive than the lower cost connection and the charging rules (which are also subject to Ofgem oversight) are applicable in this context. The customer (KM wind farm) was required to make a contribution.
80. If SPEN disclosed the contribution, it would involve disclosure of the difference between the lowest cost option and the underground option. Were landowners to become aware of the terms of agreements and costs paid by generators to secure an underground connection, there is a risk that SPEN's ability to secure land rights quickly, and on terms which are economic and efficient would be negatively impacted. It could also create unrealistic expectations on the part of landowners as to the amount that is properly payable to install transmission apparatus on land. They would point to the difference between underground and overhead connections, as opposed to the true value in question. This

would have a detrimental impact on the development of the transmission system as a whole and on consumers. It could delay connections, inflate financial demands, contribute to programming uncertainty and ultimately adversely affect connection dates. SPEN contends, this would lead to an increase in the cost of connecting to the transmission system. These costs are passed on to the consumer.

81. SPEN also contends that release of the redacted information would also significantly damage the economic interests of electricity generators seeking to connect to the transmission system by undermining their bargaining position with landowners. Electricity generators also seek to reach agreement with landowners to facilitate the connection of their projects to the transmission system.
82. SPEN maintains that the redacted information remains current, and public disclosure would cause significant harm. If the redacted information was to be disclosed and made publicly available, third parties could use it as a benchmark in future negotiations with electricity network operators and generators. Given the number of connections provided by SPEN and the scope of the system operated by NGENSO the harm would be severe and frequent. This would impede SPEN's ability to develop and maintain an efficient, co-ordinated and economical system of electricity transmission for the benefit of consumers. As a result, the disclosure would harm the operation of the electricity industry as a whole, and would have a significantly negative impact on consumers.
83. SPEN explained that it had consulted with NGENSO, who confirmed that in its opinion the disclosure of the redacted information would harm its economic interests as described above. Based on the knowledge of the electricity industry and its role in the interface between SPEN and electricity generators, NGENSO also confirmed that, in its opinion, the disclosure of the redacted information would harm the interests of the electricity generator, and the electricity industry as a whole.
84. The complainant casts doubt on whether any harm would be caused by disclosure. SPEN has made its decision on the route. The redacted documents are several years old. The Commissioner has been provided with the redacted documents, Issue 1 of IP2 is dated March 2013 and Issue 2 of IP2 dated September 2014. The initial request was made in February 2018 with the specific request from him to remove redactions late in 2019. Any subsequent tendering by suppliers for the construction of the cable has been accomplished. By the time the request was made any sensitivity over commercial information had passed and the withheld information is not current.

Would the confidentiality be adversely affected by disclosure?

85. SPEN contends that the adverse effect test was satisfied in relation to the information it had redacted. It concluded that disclosure would harm the confidential nature of that information by making it publicly available.
86. The Commissioner provided the complainant with her initial view and he provided further argument to support his view that redacted financial information should be released. He took issue with some examples that the Commissioner had provided from her published decision notices because they concerned the commercial activities of local authorities. He did not accept that a council buying a commercial service from suppliers or private land transactions was comparable as it involves open market activity, the third party involved has been selected on the basis of price and market value. In an open market activity the need to maintain confidentiality is self-evident because competitors could otherwise gain an advantage.
87. The complainant argues that the situation with SPEN is completely different. SPEN is fulfilling a regulatory function and their public role is to provide connections to the national electricity transmission service. The KM wind farm power cable is not an open market activity. It is not a private activity. SPEN are the only provider of these connections in southern Scotland and it is a statutory monopoly. SPEN acting as a public authority are mandated to provide this connection. As such SPEN are obliged to comply with the request to provide the power connection and are responsible for selecting the route and assessing the environmental consequences of the cable. The complainant states that the financial information in question is an economic cost benefit analysis. The economic information here is part of environmental decision-making.
88. In determining the financial cost of the power cable SPEN are obliged to follow the terms of their licence and the regulated Codes for provision of the power cable, set by Ofgem and the legislation. As such, the financial information in SPEN's case is formulaic. SPEN's economic assessment is part of internal documents, for internal use. It is not the costs of a private open market transaction.
89. The complainant does not accept that there would be any adverse effect regarding confidentiality. He believes that the Commissioner's criteria for deciding whether EIR 12(5)(e) is met justify the disclosure of the economic information. In his view SPEN's redacted information is clearly economic cost-benefit analysis. His view is that the non-disclosure criteria do not apply to SPEN and his EIR requests. To the extent that they might have been relevant at the time the documents were

produced (before the route was determined) any relevance has been removed over the time that has elapsed since.

90. The Commissioner accepts that the withheld information is commercial information. Even within the context of a monopoly transmission owner SPEN is obliged by its terms to facilitate competition, and the withheld information relates to the charge to be made by SPEN to provide an underground cable connection and the customer's (KM wind farm) contribution to that cost. There is a complicated set of commercial considerations beyond this which have been set out earlier in this decision notice. It is clear that the confidentiality is provided by law. The withheld information is to protect a legitimate economic interest which SPEN argues is still current and could be used as a benchmark in future by third parties in negotiations with electricity network operators and generators regarding connection fees and the cost of land rights. The disclosure would adversely affect confidentiality and undermine trust between the parties. As the first three conditions are met, the fourth condition that confidentiality would be adversely affected is consequently met.

Public interest test

91. Regulation 12(2) states that a public authority shall apply a presumption in favour of disclosure. It may be that there is a greater public interest in disclosure, even though the exception is engaged and the Commissioner has gone on to consider whether this is the case.

Public interest in favour of disclosing this information

92. SPEN accepts that there is public interest in understanding the relationship between the cost of overhead and underground electricity transmission connections. The difference between these costs depends on a number of considerations which are particular to each project and include technical issues associated with local ground conditions etc, as well as matters such as the cost of future maintenance. Costs associated with the use of underground cables are often discussed in the context of applications seeking consent for overhead lines. In these circumstances, interested parties frequently express a preference for the use of an underground cable instead of an overhead line, for example by pointing to the lesser visual impact of underground cables. Where these issues are relevant to consenting, SPEN publicly comments on the factors which have been considered in selecting a particular type of connection, including economic considerations (which may be expressed as a multiple or a fraction of the cost of another type of connection for a given project).

93. The public authority has concluded that the public interest in disclosure of the redacted information (specifying the contribution values) is limited. The appropriateness of the financial information has been considered by NGENSO in its capacity as the system operator, in the context of the contractual arrangements. Additionally, the general principles governing the relationship between the costs of overhead and underground connections are set out in publicly available documents. For the reasons discussed above, the public interest in withholding the redacted information outweighs the public interest in disclosure.
94. The complainant expressed on several occasions his view that this information should be disclosed because it was in the public interest to do so. His requests include his opinion that local people were not consulted over the route until after construction started, that local community views were not sought and that there was no proper public participation. He highlights certain health and safety risks and the disruption to the lives of local people. Underpinning these views is his contention that SPEN did not comply with its own legal requirements, policies or processes.

Public interest factors in favour of maintaining the exception

95. SPEN argues that it considers information of this type to be confidential. It is necessary for SPEN to accept this information in confidence within the terms of the TOCA, to allow it to comply with the statutory duties to maintain an efficient, co-ordinated and economical system of electricity transmission for the benefit of consumers and to facilitate competition in the supply and generation of electricity. It contends that there is a high degree of public interest in protecting the confidentiality surrounding the redacted information. Fundamentally, disclosure of this class of information could lead to increased costs to consumers.
96. SPEN's view is that disclosure of the redacted information would harm the legitimate economic interests of SPEN and NGENSO. It would also harm the economic interests of electricity generators, the operation of the electricity industry and the wider interests of electricity consumers. The harm would materially damage SPEN's ability to develop and maintain an efficient, co-ordinated and economical system of electricity transmission for the benefit of consumers. Disclosure of the redacted information would significantly prejudice SPEN and NGENSO in discussions relating to current and future electricity transmission connections. It would harm the position of generators in relation to securing grid connections for their electricity generation projects, and wider commercial discussions with third parties. There is a high degree of public interest in protecting the economic interests which would be harmed by disclosure of the redacted information.

The balance of the public interest

97. The complainant has received a great deal of information from SPEN but not, initially at least, in compliance with the EIR. He presents his case that public interest as it relates to local people has not been served by this prolongation and that, in effect, decisions were made without the benefit of proper consultation that would have been aided by adherence to SPEN's own policies and processes. The EIR requests were made to understand or underline what the complainant sees as a serious lack of compliance with these policies and processes. The Commissioner cannot comment on whether SPEN met its own or its regulatory duties. She can only consider where the public interest lies in terms of whether the information should be released.
98. The Commissioner's view is that there are two types of public interest here – the interests of the affected community and the interests of the wider public. The Commissioner also has to look at the position at the time of the request. The complainant understandably points to the passage of time since the information was generated as reasons to disclose. However, SPEN considers this information to be live and that its release would have an adverse effect on confidentiality and undermine both its ability and the customer's ability (in this case KM wind farm) to negotiate. On balance, the Commissioner accepts that there could be increased costs to the consumer as a result of the disclosure which would not be in the interests of the wider public. She therefore considers that this exception was appropriately cited.

Right of appeal

99. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

100. 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.

101. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

4 October 2019 -

'You appear to provide the information requested to questions 1 to 6, 16 and 17 of the 19/2/18 letter. Essentially you confirm that: the KM power cable project falls within scope of Approach to Routing; I, the community, the public and government can use and rely on the Approach to Routing document; your staff should comply with Approach to Routing; your first contact with the community was in late September 2017; and that this first contact with the community was "after you had decided the route for the KM power cable project"

You have not provided the requested information for all other requests for environmental information, under questions 7 to 15, and 18 to 21. I therefore invite you to review the information provided. Sadly, your 14/8/19 response involves a degree of obfuscation and misdirection.'

The complainant made some additional statements and asked some questions which SPEN treated as a new request/s in addition to reviewing his 27 August 2019 request:

'Q7. Question 7 ask whether you have applied Approach to Routing to the KM power cable project. Whilst your response states that you have, it does not demonstrate any process of this occurring. You do not include any documents related to this information request. The only evidence you provide on this is document D2, which actually shows that the routing was determined by an external body and that the possible route alternative options were not considered. You seem to use this to justify why the Approach to Routing document was not applied. Your response is in vague generalities and entirely without substantiation. Had you actually applied the Approach to Routing document there is likely to be plenty of documentary evidence to support your claim. This evidence might include details on the alternative routes considered, documents detailing how these options were assessed against the criteria set out in Approach to Routing, how you balanced "consideration of technical and economic viability, deliverability and environmental effects" and an Environmental Report. You have not substantiated your assertion of applying approach to routing and therefore not provided the information requested.

Q8. Question 8 asks for explanation on why you have not applied your published stated preferred option, of an overhead route. Your response states clearly that this was due to Banks' choice. However, there is no provision in Approach to Routing for you to simply adopt a third party's choice. The responsibility for route selection, as set out in Approach to

Routeing, rests with you SPEN, as the public authority. It is worth noting that you are using powers vested in you under statute, not as some private enterprise involved in a commercial venture. You have a duty, as a public authority, to follow your published documentation to properly assess the alternatives. Your response also does not explain the various possible options for alternative underground routes and why the final choice of route was selected. Your response to the request for environmental information is in vague generalities. There is no evidence of any assessment of the environmental effects of each possible route being considered, nor of any environmental or other specific factors that influenced the choice of route. Or indeed any options. Neither is there any substantiation of compliance with Approach to Routeing. There is no evidence, for example, of any consideration of the environmental effects which might affect residents in Boghead or elsewhere. It is inevitable that as a consequence of the chosen 18km underground route, mostly along roads classified for local traffic use only, there would be substantial traffic effects, road closures and disruption to residents from construction as well as a permanent electromagnetic environmental effect of the 132,000-volt power cable for nearby residents. Yet, there is no evidence that these environmental effects were ever considered by you. You have not substantiated your claim and not provided the information requested.

Q9. Your response on question 9 appears to suffer the same deficiencies as your responses on questions 7 and 8. No evidence to substantiate your statements is provided by you. You have not substantiated your claim and not provided the information requested.

Q10. Question 10 refers to the need for you to establish wider public views on the "proposed route" for the KM cable project. In the 19/2/18 letter this question is explicitly tied to the terms used in Approach to Routeing. Section 5.2 of Approach to Routeing refers to two stages, with stage 1 involving the "appraisal of route options to select a preferred route". This requires "consultation with stakeholders and the wider public". It is clear this request for environmental information is concerned with the proposed route, at stage 1. Your 14/8/19 response conflates 'proposed route' with the subsequent chosen 'preferred route'. Your response provides a list of events which start in July 2017 (D3). These events are all after you had decided the cable route and are therefore not related to the proposed route. The proposed route having been decided by the time of these events. So, the events listed in your response have no bearing on the proposed route. Your response provides no information on the consultation required in the stage 1 on the proposed route. Accordingly, you have not provided the information requested relating to the 'proposed route'.

Q11. Question 11 also refers to the "proposed route" for the KM cable project. It requests details on consultations with the local communities

"before deciding the final route". Your response on Q11 refers to your Q10 response. Again, none of these events relate to consultation on the 'proposed route' before deciding the final route. Your 14/8/19 response simply obfuscates. All of the events referred to by you took place after you had decided the route. Accordingly, you have not provided the information requested relating to the 'proposed route'.

Q12. Question 12 asks "what steps did you take to engage with the Boghead community before deciding the route through Boghead?" None of the events given in your 14/8/19 response took place before the route was decided. Again, you have not provided information requested, which relates to engaging 'with Boghead community before deciding the route'.

Q13. Question 13 asks if you complied with your published guidance. Your published guidance clearly includes Approach to Routeing. The context for this request is the 19/2/18 letter, which refers to "engagement is carried out before decisions are made and before works start" and to section 5.3 of Approach to Routeing. In response to Q10, Q11 and Q12, you give details of your engagement which took place after, rather than before, the decision on the cable route was made. That appears to be the basis of your response to Q13. Your response to Q13 is not based on facts. The events outlined in your response do not provide evidence supporting your claim. You have therefore not provided the information requested.

Q14. Question 14 asks whether you complied with your published guidance on the community engagement process with Boghead before deciding the route. Your 14/8/19 response states, "SPEN did engage extensively with the community of Boghead ... as detailed in the Approach to Routeing Document". However, your response on Q14 refers to your Q12 response, which was not conducted before deciding the route. As detailed in Q10 to 12 above, all engagement was undertaken after the route was decided and not before deciding the route, as set out in the Q14 request. At no point in any of your response have you given any details of any engagement with the Boghead community in accordance with Stage 1 as set out in Approach to Routeing or before deciding the route. You refer to engagement with Council roads officials, which you claim considered the impact on local residents. This is grossly misleading and clear misdirection. Roads officials do not consider impact of the cable project 'on local residents' and do not represent the community of Boghead in any way. A responsible public authority would know that. In all circumstances, so called engagement with roads officials cannot in any way be construed as engaging with a local community. Your response again appears to be obfuscation and misdirection. It does not provide the information requested.

Q15. Question 15 tacitly refers to Approaches to Routeing, which notes that where an EIA is not required an Environmental Report is prepared. This

Environmental Report is to be prepared before the preferred route is determined. Your 14/8/19 response to question 15 is to provide an Ecological Constraints Survey (D15) and an Environmental Management Plan (EMP)(D16). The date of the EMP appears to be 7/8/18, which is after the project was well underway, if not nearing completion. The Ecological Constraints Survey covers one aspect but does not consider all the potential environmental effects which would be incorporated into an Environmental Report. This information provide in your response therefore does not constitute an Environmental Report for the KM cable project, as requested. Your response does not provide the environmental information requested.

Q18. Question 18 asks if you accept that your first contacted the community was after deciding the cable route. You agree by saying 'yes', admitting that your contact with the community was after you had decided the cable route. You then go on to obfuscate by suggesting that "engagement ... take place before works are carried". Although this is irrelevant (since it is not what was requested), this is incorrect. This quote appears to be a generalisation of a hoped-for approach, rather than pertaining to the facts of this case. All of your engagement took place after works had started. Your claim that you are "able to proceed ... without a formal public consultation process" contradicts the terms set out in Stage 1 of Section 5.2 of Approach to Routeing. This states that "the proposed route will the one, selected after appraisal of a number of route options ... following engagement with stakeholders including local communities". No such engagement with the local community took place for the KM cable project, at stage 1. Your 14/8/19 response accepts that your first contact was after you decided the cable route. Your other assertions are incorrect. Just as the ICO's decision (FER0809814) shows you were unaware of their legal obligation under the EIR, it is clear you have a callus regard for your duties as a public authority. You have not provided the environmental information requested.

Q19. Question 19 asks why we were not told from the outset of your communications with the community about the size of the cable. You acknowledge, in response to Q10 and Q17, that your first contact with the Boghead community was in late September 2017. This sets the date of the 'outset' of your communications. Your 14/8/19 response states your documents (D9-D13) were issued on "26 February 2018". In other words, the information was proved five months after the outset of your first communications with the community. No other information supporting your claim has been provided. It appears that you are obfuscating. Accordingly, you have not provided the information requested.

Q20. Question 20 requested the risk assessment for the 'KM cable project'. Your 14/8/19 response provides documents D19, D20 and D21. However, these documents do not provide the information requested. The information request in Q20 relates to the Risk Assessment for the whole KM cable

project. The documents provided in your 14/8/19 response covers only a limited length of the cable (D19) or a limited aspects of the project (D20), whilst D21 is not a Risk Assessment for the cable project. Accordingly, your response does not provide the environmental information requested. In the event that no Risk Assessment for the KM cable project was undertaken, you should state this openly, even though it may provide evidence that you were in breach of the Health & Safety at Work Act and the Construction (Design and Management) Regulations 2015.

Q21. Question 21 asks why the Risk Assessment was not provided in November 2017, after being informed by your senior staff that it was a private document. It is, and indeed was at the time, clear that your senior member of staff's statement was incorrect and misleading. A responsible public authority would admit the error. Whilst the extent that the documents provide a risk assessment is in doubt (see Q20 above), your 14/8/19 response document D21 is dated December 2015. It therefore pre-dates the November 17 meeting. This contradicts your claim that the documents "were not finalised at the time of the request". The evidence provided by you does not support your claim. You have not provided the information requested.'