



26 April 2023

Dear [REDACTED],

Environmental Information Regulations request: EIR2023/00091

Thank you for your Environmental Information Regulations (EIR) request received on the 22 February, and subsequent clarification emails, the last of which was received 22 March, in which you requested the following:

Your request:

I'm writing to make a request under the Freedom of Information Act. My request relates to the net zero London to New York flight detailed on .gov.uk [here](#)¹.

I'm writing to request the following.

- 1) A full breakdown of how the up to £1 million in government funding for the project will be spent.*
- 2) A copy of Virgin Atlantic's proposal for the project.*
- 3) Any correspondence in which the funding recommendation by Innovate UK for Virgin Atlantic's proposal was discussed.*

Clarification:

Correspondence search terms of "Virgin" AND "net zero" AND "transatlantic flight" between 14.05.22 and 16.12.22

Our response:

I can confirm that UK Research and Innovation (UKRI) holds some information relevant to your request. Please see the information below and attached.

- 1) A full breakdown of how the up to £1 million in government funding for the project will be spent.*

Innovate UK currently do not hold a spend profile for the project "100% SAF, Net Zero Flight (NZF)", therefore Regulation 12(4)(a) 'Information not held' applies.

To explain further, this project is still in the project setup stage and the Grant Offer Letter has not yet been issued. Until project setup has been completed, a full breakdown of how the grant offer is to be spent is not required. Instead, preliminary figures are provided as part of the application by the applicants.

We consider Regulations 12(5)(e) and 12(5)(f) to apply to these preliminary figures, as explained below.

- 2) A copy of Virgin Atlantic's proposal for the project.*

Please find attached a redacted copy of the project application "10049507 – Application_Redacted". We consider that information contained within the application, that is not already in, or intended for, the public domain, falls under the following exceptions:

¹ <https://www.gov.uk/government/news/worlds-first-net-zero-transatlantic-flight-to-fly-from-london-in-2023>

Regulation 12(5)(e) ‘The confidentiality of commercial information’

As the information is provided by a third party, 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 confidence is provided by law to protect a legitimate economic interest.

In order for this exception to apply there are a number of conditions that have to be met. We have carefully considered these conditions and they are all engaged:

Commercial or industrial in nature

The Information Commissioner Office (ICO) published guidance on Regulation 12(5)(e) sets out that for information to be commercial or industrial in nature it will need to relate to a commercial activity. The data held is both commercial and industrial in nature, as the application document sets out confidential details of a project which sets the project participants aside from their competitors commercially, and also includes significant financial information on costings.

Confidentiality provided by law

We believe that the information held is protected by a common law duty of confidence. Plans for, and the detailed costings of, a project of this nature have the necessary quality of confidence. The information is not trivial, is not already in the public domain and has always been treated confidentially by the participants. The information was provided to Innovate UK on the understanding that it would be kept confidential and would not be disclosed to third parties.

Legitimate economic interests

To apply the exception, disclosure of the information must harm a legitimate economic interest. If the information is disclosed, it would give competitors access to information revealing what the project is planning to do, thereby diminishing the competitive advantage and improving the position of others in the same market. The ICO’s guidance specifically states that a legitimate economic interest could relate to retaining or improving market position and/or ensuring that competitors do not gain access to commercially valuable information.

As previously mentioned, the information includes financial figures setting out, in detail, the likely amounts to be spent by the project partners on things such as labour, overheads and materials. How finances are allocated and costing the project is commercially sensitive information which would affect legitimate economic interests if released. Importantly, the costing information is current, and as such carries more beneficial advantage to any competitor than historical or out of date costings.

The disclosure of the information could disrupt the intent of the project as there is nothing that prohibits competitors trying to fly their own 100% SAF, Net Zero Flight ahead of the intended target date. This would adversely affect the consortium’s legitimate economic interests.

Releasing the commercially sensitive information of project partners could also affect their willingness or enthusiasm to be involved in the project going forwards which would be disruptive and in turn negatively impact the legitimate economic interests of all involved.

We have therefore found that the exception 12(5)(e) applies in this case.

Regulation 12(5)(f) ‘The interests of the person who provided the information’

We consider that Regulation 12(5)(f) also applies to this information, as the interests of the person, or in this case organisation, that provided the information, would be adversely affected as described above.

The applicants were not under any legal obligation to supply it, the information was supplied with the expectation that it would not be disclosed to a third party and the applicants have not consented to its disclosure.

Regulation 12(3) and 13 'Personal data'

In addition, throughout the application personal information (names and contact details) has been redacted under Regulation 12(3) and Regulation 13 of the Environmental Information Regulations.

Regulation 12(3) provides that third party personal data can only be disclosed in accordance with Regulation 13. Specifically, Regulation 13(1) provides an exception for information which is the personal data of an individual other than the applicant and where one of the conditions listed in regulations 13(2) or 13(3) is satisfied. One of the conditions, listed in Regulation 13(2)(a)(i) is where disclosure to any member of the public would contravene any of the data protection principles as set out in the Data Protection Act. It is our view that to release information that would identify individuals would be a breach of the first data protection principle as this would be unfair to the individuals concerned and they had no expectation that their names would be released.

3) Any correspondence in which the funding recommendation by Innovate UK for Virgin Atlantic's proposal was discussed.

We consider that any internal communications regarding discussion of the funding recommendation by Innovate UK for the "100% SAF, Net Zero Flight (NZF)" project to fall under the exemption at Regulation 12(4)(e) 'Confidentiality of commercial information'.

While there is a public interest in the disclosure of internal communications to promote the transparency and accountability of public authorities, there is also significant public interest in the protection of internal deliberation and decision-making processes. This is particularly important when preserving a safe space in which to debate issues and reach decisions away from external scrutiny and preventing a 'chilling effect' on the exchange of free and frank views in future.

Attached, in "*EIR2023_00091 Correspondence_Redacted*" are emails between Innovate UK and the Department for Transport that fall within scope of your request. In the emails themselves, we have redacted any personal information (names and contact details) under Regulation 12(3) and Regulation 13 'Personal data' of the EIR, as described above.

Contained within these emails are two attachments. The first of which, "Line draw sheet for 100pc SAF competition – redacted" contains assessor scores and comments. We are withholding this document under Regulation 12(5)(f) 'Interests of the person who provided the information', considering that assessors have an expectation that the scores and comments they provided as feedback when reviewing an application would not be disclosed. To disclose these comments and marks may inhibit the openness and candour of the peer review process if assessors believed that their views and opinions may be shared.

We have included a redacted copy of the second attachment, "*100pc SAF Transatlantic Competition - Recommendation from IUK to DfT_Redacted*". A small amount of information has been redacted from this document, in line with exemptions applied to that of the project application, Regulations 12(5)(e) and 12(5)(f), as described above.

Public Interest Test

We have given consideration to the public interest in disclosing the information and have taken account of a presumption in favour of disclosure which is required by Regulation 12(2). In favour of release, it is recognised that giving the public access to environmental information can encourage greater awareness of issues that affect the environment. Greater awareness helps to increase public participation in decision-making; it makes public bodies more accountable and transparent, and it builds public confidence and trust in them.

There is however also a public interest in ensuring that industries are able to operate fairly in a competitive market and, given the nature of the project and what it expects to achieve is also in the public interest, to take any action that could adversely affect the project, by disclosing the commercial and industrial information contained in the application document would not be in the public interest.

We are satisfied that the public interest is met by the information which is already in the public domain and have described the specific, negative impacts resulting from disclosure of additional information. Therefore, on considering the arguments in favour and against, we find that the public interest in maintaining the exception outweighs the public interest in disclosure.

If you have any queries regarding our response or you are unhappy with the outcome of your request and wish to seek an internal review of the decision, please contact within the next 40 working days:

Head of Information Governance

Email: foi@ukri.org

Please quote the reference number above in any future communications.

If you are still not content with the outcome of the internal review, you may apply to refer the matter to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the review procedure provided by UKRI. The Information Commissioner can be contacted at: www.ico.org.uk.

If you wish to raise a complaint regarding the service you have received or the conduct of any UKRI staff in relation to your request, please see UKRI's complaints policy: <https://www.ukri.org/about-us/policies-and-standards/complaints-policy/>

Yours sincerely,


Information Governance
Information Rights Team
UK Research and Innovation
foi@ukri.org | dataprotection@ukri.org