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Case Reference: FT/EA/2024/0474V

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Heard by Cloud Video Platform
Heard on: Friday 27 June 2025
Decision given on: 8 August 2025**

Before

**JUDGE A. MARKS CBE
MEMBER N. MATTHEWS
MEMBER J. MURPHY**

Between

LUCAS AMIN

Appellant

and

THE INFORMATION COMMISSIONER (“the Commissioner”)

Respondent

Representation:

For the Appellant: Alex Goodman KC and Alex Shattock

For the Respondent: Did not attend the hearing nor was represented

Decision: The appeal is **allowed**: a substitute Decision Notice is set out below.

Substitute Decision Notice:

To: Office of the Secretary of State for Wales
Freedom of Information Team
Gwydyr House
London
SWIA 2NP

email: walesofficefoi@ukgovwales.gov.uk

Ref. 23EIR 115 - Amin

Re. ICO Decision Notice IC-303469-N5B0 dated 17 October 2024 - Lucas Amin

The Office of the Secretary of State for Wales must, by no later than 4pm on the date 35 working days after promulgation of this First-tier Tribunal decision reference FT/EA/2024/0474 (or, if later, until the outcome of any appeal of that decision), provide to the Appellant, Lucas Amin, the Closed Bundle of material previously provided to the Tribunal under GRC Rule 14 with the redaction only of the names and other personal details of junior civil servants (shown highlighted in blue in the Closed Bundle).

A failure to comply with this Substitute Decision Notice could lead to contempt proceedings.

REASONS

Introduction

1. This is an appeal against the Information Commissioner's decision notice IC-303469-N5B0 dated 17 October 2024 which held that the Office of the Secretary of State for Wales ("the Wales Office") was entitled to rely on Regulations 12(5)(e) and 13 of the Environmental Information Regulations 2004 ("EIR") to refuse to disclose some of the information requested by the Appellant ("LA").
2. The appeal hearing was held via HMCTS' cloud video platform. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way. There were no interruptions of note during the hearing.

Background

3. The Wales Office held various meetings with vehicle manufacturers in 2023 about the impact of the "zero emission vehicle" ("ZEV") mandate on Wales as part of a wider consultation exercise on ZEV launched in March 2023. The Wales Office also held meetings with energy companies about the impact of net zero policies in Wales.

The request for information, internal review and responses

4. On 5 December 2023, LA wrote to the Wales Office as follows:

"Dear Sir or Madam

This is an EIRs request about the following meetings.

i. 20/6/23 - David TC Davies met with Aston Martin to discuss e-fuels

ii. 23/5/23 - David TC Davies met with Toyota to discuss Toyota's modelling on the impact of the proposed Zero Emissions Vehicle mandate policy.

iii. 13/3/23 - David TC Davies met with Shell to discuss decarbonisation in South Wales

iv. 7/3/23 - David TC Davies met with Hynet to discuss HyNet's hydrogen project proposals for the North West

v. 25/2/23 - David TC Davies met with Tata Steel Europe to discuss Tata Steel current operations and plans for the future

1. I am writing to request documents related to each of these meetings, including but not limited to:

a. Agendas

b. Minutes

c. Briefing notes

d. Readouts

e. Other meeting memoranda

2. I am also writing to request copies of correspondence generated between David Davies and the respective parties to these meetings in the months of March, April, May and June 2023.

I ask that correspondence include, but not be limited to:

a. Letters

b. Emails and attachments

c. Text messages

d. WhatsApp messages."

5. On 6 February 2024, the Wales Office responded, confirming that it held some of the requested information but stating that it was being withheld under EIR 12(5)(e).
6. On 7 February, LA requested an internal review. Following such a review, on 15 March 2024 the Wales Office wrote to LA maintaining its original decision not to disclose the requested information.

The Commissioner's investigation and Decision Notice

6. On 26 April 2024, LA complained to the Commissioner about the Wales Office's handling of his request for information.
7. On 17 October 2024, the Commissioner issued decision notice IC-303469-N5B0 which in summary concluded that:
 - (a) EIR 12(5)(e) is engaged, applying the four tests set out in Bristol City Council v IC and Portland & Brunswick Squares Association (EA/2010/0012),;
 - i. some of the information is commercial or industrial in nature;
 - ii. some of requested information is subject to the common law duty of confidence, "*given the nature of the information and the manner in which it was shared*";
 - iii. confidentiality is required to protect a legitimate economic interest in respect of that information; and
 - iv. disclosure would adversely affect the confidentiality of the information.
 - (b) The public interest in maintaining the exception in EIR 12(5)(e) outweighs the public interest in disclosure of the withheld information.

(c) The names of junior officials should be redacted under EIR13.

(d) Some of the information related to neither exception and should be disclosed within 30 days.

8. On 30 November 2024, the Wales Office disclosed the "*releasable information*" heavily redacted.

Appeal to the Tribunal

9. On 14 November 2024, LA's representatives sent a Notice of Appeal to the Tribunal challenging the Commissioner's Decision Notice.

10. The grounds of appeal are that:

(a) EIR 12(5)(e) is not engaged because the information is not subject to a duty of confidence provided by law.

(b) Alternatively, the public interest favours disclosure.

11. LA seeks a substitute decision notice directing the disclosure of the withheld information subject to redaction only of the names of junior civil servants.

The Law

12. It is not disputed that EIR, rather than FOIA, is the applicable statutory regime in this case.

Duty to make available environmental information on request – subject to exceptions

13. EIR 5 requires public authorities that hold environmental information to make it available on request as soon as possible and no later than 20 working days after receipt of the request.

14. EIR 12(1) provides that public authorities may refuse to disclose environmental information requested if an exception applies **and** if:

...

(b) In all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

15. EIR 12(2) states that public authorities shall apply a presumption in favour of disclosure but subsequent paragraphs of EIR 12 provide a number of exceptions. The exception relevant to this case is:

(5) ...a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;..

16. In Bristol City Council case, the Tribunal held that for the exception in EIR 12(5)(e) to be engaged, four tests must be met:

- (a) the information is "*commercial or industrial*";
- (b) the information is subject to confidentiality provided by law;
- (c) such confidentiality is provided to protect a legitimate economic interest i.e. (according to the Tribunal in Elmbridge Borough Council v. IC and Gladedale Group Ltd. (EA/2010/0106), more likely than not, disclosure would cause some harm to an economic interest; and
- (d) disclosure of the information **would** adversely affect such confidentiality.

Sections 57 and 58 FOIA: The role of the Tribunal

- 17. Section 57 FOIA entitles either the requester or the relevant public authority to appeal to this Tribunal against the Commissioner's decision notice.
- 18. Under s. 58 FOIA, if the Tribunal considers that the decision notice was either wrong in law or, to the extent that the notice involved an exercise of discretion by the Commissioner he ought to have exercised it differently, the Tribunal shall either allow the appeal (or substitute the decision notice) or dismiss the appeal.
- 19. The Tribunal can also review any finding of fact on which the decision notice was based.

Evidence

- 20. Prior to the hearing the parties had submitted written evidence and submissions. These were set out in an Open Bundle of 181 pages (including an Index) and a Supplementary Open Hearing Bundle of 147 pages (including an Index). The Supplementary bundle included a witness statement by LA. The Commissioner provided further written submissions; LA provided a skeleton argument and authorities bundle. The Tribunal was also provided with a Closed bundle of material.
- 21. For the benefit of LA – and to minimise the inevitable disadvantage to him of not seeing the closed bundle withheld from him in accordance with GRC Rule 14(6) and the Tribunal's Practice Direction on Closed Material – the Commissioner provided by email to the Tribunal and LA's representatives the 'gist' of such material as follows:

The closed bundle contains the information that Wales Office withheld from disclosure in response to the Appellant's information request dated 5 December 2023 for information about meetings held between February and June 2023 between David Davies, the then Secretary of State for Wales and vehicle manufacturers and energy companies under regulation 12(5)(e) EIR.

Specifically the closed bundle contains a covering email from Wales Office to the Commissioner dated 11 October 2024 (which the Appellant has with personal data redactions in the open bundle at page 40) with an updated version of annex C namely, the briefing notes and read outs for meetings with green highlighting for information exempt under regulation 12(5)(e) EIR as referenced in paragraph 17 of the Commissioner's response to the appeal dated 21 January 2025.

Accordingly, the closed bundle contains an unredacted copy of the information that Wales Office disclosed to the Appellant on 13 November 2024 which is at pages 60-73 of the Open Bundle.

22. The decision notice describes the withheld information as:

"18...including details of how the ZEV (Zero Emission Vehicle) mandate would affect vehicle production and the consequent impact on the business plans of certain parties to the meetings.

19. In the case of other parties to the meetings, the withheld information includes details of their efforts to build the infrastructure needed to support greener industry. This information includes material on the public and private financing of green initiatives as well as the practical aspects of building a hydrogen production plant.

The Commissioner considers that the above description enables the Appellant to participate in the appeal proceedings without defeating the purpose of the appeal."

Submissions

Summary of submissions on behalf of the Commissioner

23. The Commissioner relies on his decision notice and his response to the LA's grounds of appeal. In summary:

Is the information subject to a duty of confidence provided by law?

24. The Commissioner submits that the withheld information is subject to the common law duty of confidence because, in brief:

- (a) the withheld information was generated in preparation for, or as an outcome of, private meetings between the Secretary of State for Wales and representatives from various businesses;
- (b) summary details of these meetings have already been published on the GOV.UK website in accordance with government transparency requirements;
- (c) topics discussed at these meetings were of genuine concern to the business interests of the private companies and to the policy interests of government departments and cannot be classed as trivial. There is no evidence that

comprehensive accounts of the meetings have been publicly disclosed and therefore the information retains the necessary quality of confidence; and

- (d) the withheld information includes material which was shared under an explicit expectation of confidence, namely briefing material provided by the Department for Energy Security and Net Zero (DESNZ) which was not to be shared at the meeting. The withheld information also includes information pertinent to the business interests of several private companies which was shared by the companies under an implied expectation of confidence.

25. Hence the Commissioner concluded in his decision notice that the exception at EIR 12(5)(e) is engaged.

Public interest arguments in favour of maintaining the exception

26. The Commissioner's notice sets out the following factors, in summary:

- (a) the withheld information concerns the commercial interests of Aston Martin Lagonda, Toyota, Shell and Hynet North West which is not only confidential but also has commercial value. The Wales Office therefore took measures for it to remain private to protect the legitimate economic interests of those companies;
- (b) because summary details of the meetings have already been disclosed in the Wales Office's transparency returns, disclosing additional information exceeds transparency requirements and risks jeopardising the commercial interests of the private sector counterparts of the Wales Office; and
- (c) it is not in the public interest to disclose information held under a reasonable expectation of confidence in circumstances where such disclosure has the potential to harm the economic interests of the confider. To disclose would damage the relationship of trust between the Wales Office and the named companies (and potentially similar companies) which would stem the flow of such information in future, to the detriment of the ability of government departments to meet their economic goals.

Public interest arguments in favour of disclosing the withheld information

27. The Commissioner's notice sets out the following factors in favour of disclosure:

- (a) EIR have an underlying element of openness and transparency which disclosure of the withheld information would endorse;
- (b) disclosure of this information would provide the public with a greater understanding of business engagement at the Wales Office, thus enabling and enriching public debate on this subject. Furthermore, release would encourage

greater accountability and increase public confidence in the integrity of decision-making in this area; and

- (c) private companies seeking government support should expect some information concerning the engagement process to be released into the public domain. Such disclosure would promote transparency, encourage competition and ultimately help achieve the best value for money in the expenditure of public funds.

Balance of the public interest arguments

28. In weighing the public interests in the decision notice, the Commissioner:

- (a) noted that the Wales Office had itself weighed the factors in favour and against the release of the requested information, and found the public interest favours non-disclosure. The Wales Office considered that disclosing the information into the public domain would breach the expectation of confidence under which the information was provided and would be to the detriment of both the private and public sector bodies to whom the information belongs; and
- (b) considered the public interest arguments himself. He accepted a public interest in transparency and accountability, noting a competing public interest in the relationship of trust between the Wales Office, DESNZ and private companies to enable them to work together to meet their economic goals. Disclosure would adversely affect this. He recognised that the Wales Office had already published summary details of the meetings and this should go towards satisfying the public interest in the topics discussed without disclosing information provided in confidence.

29. The Commissioner concluded that the public interest in maintaining the exception at EIR 12(5)(e) outweighs the public interest in disclosure of the withheld information.

Commissioner's further submissions

30. In his response to the Grounds of Appeal, the Commissioner further submitted that:

Confidentiality

- (a) Unlike the equivalent exemption under FOIA (s.41), there is no need to establish an actionable breach of confidence for the purposes of EIR 12(5)(e). It is sufficient that there is a theoretical duty of confidence provided by law;
- (b) the meetings were to discuss the relevant car manufacturers' concerns about the impact of the ZEV mandate on their businesses, the energy companies' development proposals for infrastructure to support greener industry and the policy interests of government departments including DESNZ;

- (c) confidentiality imposed on any person by the common law of confidence can be explicit or implied. The withheld information contains information voluntarily provided to the Wales Office by the companies concerned under an implied expectation of confidence, and briefing material provided by DESNZ under an explicit expectation of confidence. The latter was not to be shared at the relevant meetings;
- (d) given the relationship between the Wales Office, the companies concerned and DESNZ, a reasonable person would have considered that the withheld information was imparted in confidence;
- (e) a public authority may accept information in confidence, even explicitly as DESNZ did in this case, but also refer to the fact that it might still be obliged to disclose it under EIR (i.e. if the other elements of the exception or the public interest test are not met). However, this type of warning does not undermine the fact that there is still an obligation of confidence;
- (f) the Consultation Document explains that "*it would be helpful if you could explain to us why you regard the information you have provided as confidential.*". However, there is no obligation to provide any such explanation. In this case, it is obvious from the nature of the relationship between the parties and the content of the withheld information, which includes information about public and private financing of green initiatives and the building of a hydrogen production plant, that one would reasonably expect it to be regarded as confidential without having to explain why;
- (g) information about public/private financing was expressly forbidden from being shared at the relevant meetings: its disclosure would damage the relationship of trust between public bodies and deter the sharing of similar information in the future. It is clear from the withheld information that the exception in EIR12(5)(e) is engaged in respect of the briefing material supplied by DESNZ; and
- (h) overall, information supplied by DESNZ to the Wales Office represents commercial or industrial information, subject to the common law duty of confidence which is required to protect a legitimate interest for the reasons set out in the decision notice.

Public interest balance

31. In his response to the Grounds of Appeal, the Commissioner further submitted that:

- (a) third parties would not expect a public authority, with whom they have shared sensitive information, to disclose the entirety of that information to the public under EIR, bearing in mind the legitimate exceptions from disclosure for certain information;

- (b) the Wales Office submitted that disclosing information beyond that which has already been published "*risks jeopardising the commercial interests of the private sector counterparts*" and more likely than not would cause some harm to an economic interest;
- (c) the Wales Office reached the right balance by publishing summary details of the meetings to enable LA and others to know that a meeting took place, the purpose of the meeting, who attended and the date it took place whilst withholding the granular information concerning those meetings in line with the reasonable expectations of the meeting attendees;
- (d) as for the allegation of "*greenwashing*", LA provided no evidence of claims made in public by the relevant companies to support any reasonable suspicion of wrongdoing;
- (e) the fact that private companies provided information to the Wales Office voluntarily strengthens the argument that disclosing the withheld information would damage the relationship of trust between them, the Wales Office and DESNZ and potentially others too; and
- (f) overall, the Commissioner properly identified, evaluated and weighed each of the public interest factors relied on. He did not err in conducting this exercise as alleged or at all.

Summary of submissions on behalf of the Appellant (LA)

32. The skeleton argument and oral representations on behalf of LA, in summary, submit:

Confidentiality

33. The applicable legal test is set out in Coco v A. N. Clark (Engineers) Limited [1968] FSR 415, the first two parts of which are often abridged by the Court to "*a reasonable expectation of confidentiality*". This is a highly context-sensitive issue which in this case includes:

- (a) the Respondent (the Wales Office) is a public body acting under statutory authority conferred on it by parliament;
- (b) the third parties in this case were aware of the onerous EIR regime which includes a presumption in favour of disclosure: exceptions must therefore be construed strictly as "*the threshold to justify non-disclosure is a high one*" (Archer v IC and Salisbury DC (EA/2006/0037) IT 9 May 2007);
- (c) persons supplying information to a public authority, otherwise under a duty, do so subject to public authorities' obligations to disclose under EIR;
- (d) all parties therefore understood that EIR might require disclosure of the information shared at their meetings, yet none of them made any express request for confidentiality;

- (e) as Megarry J (as he then was) said in the Coco case (final para. on p.420),
"However secret and confidential the information, there can be no binding obligation of confidence if that information is blurted out in public or is communicated in other circumstances which negative any duty of holding it confidential";
- (f) the information provided by the car manufacturers was part of a wider consultation exercise on the ZEV mandate. It is a long-established principle of central government consultations that at least a summary of consultation responses will be published;
- (g) moreover, the consultation document for the ZEV mandate consultation expressly stated under the heading "Freedom of Information" that *"Information provided in response to this consultation...may be subject to publication or disclosure in accordance with [FOIA] or [EIR]. If you want information that you provide to be treated as confidential...it would be helpful if you could explain to us why you regard the information you have provided as confidential...but we cannot give an assurance that confidentiality can be maintained in all circumstances..."*;
- (h) all the private entities engaging with the Wales Office were doing so as volunteers seeking to influence government policy; and
- (i) all the third parties who met the Secretary of State were aware that some details of the meetings would be published by the government on the GOV.UK website in accordance with the government's general transparency obligations.

34. Overall, the information from third parties was imparted to a government minister subject to EIR/FOIA duties for commercial influence or advantage and without any representations about confidentiality: indeed, with regard to the ZEV mandate, information was shared in the explicit knowledge that it might be shared.

35. While the briefing material from DESNZ was shared with the minister under an explicit expectation of confidence, neither the Wales Office nor the Commissioner has explained how information supplied to the Secretary of State by another department has the requisite elements to engage EIR 12(5)(e) of being "*commercial or industrial*" information, or subject to the common law duty of confidence, or protecting a legitimate economic interest.

36. Further, there is no evidence that the third parties' legitimate economic interests in this case will be harmed by disclosure of the withheld information.

37. In short, from the context in this case, the information sought by the Appellant was clearly not subject to any express obligation of confidence nor any implied common law duty of confidence.

Public interest balance

38. Even if the exception in EIR 12(5)(e) applies, the public interest factors **against** disclosure in this case are weak because:

- (a) the presumption of disclosure under EIR 12(2) creates a high threshold to justify non-disclosure yet in this case there is no detailed reasoning or evidence, merely assertion of general factors;
- (b) contrary to the Commissioner's conclusion in his decision notice, disclosure of the information would not harm the relationship of trust between the Wales Office, DESNZ and the private companies. This is because the companies were well aware that government departments may need to disclose environmental information they receive: companies therefore take a calculated risk that the information they provide may be disclosed, and weigh it against the potential benefits of engaging with opportunities to influence the government;
- (c) the suggestion that these companies - or others in future - might be deterred from engaging with government is really another version of the "*chilling effect*" argument previously rejected by tribunals: for example, in Davies v the Commissioner and the Cabinet Office [2019] UKUT 195 (AAC), the Upper Tribunal observed (at para. 25) "*There is a substantial body of case law which establishes that assertions of a 'chilling effect' on...effective conduct of public affairs are to treated with some caution...*". In reality, private companies such as those in this case will continue to meet with ministers and volunteer information when it is in their commercial interests to do so to seek to influence government policy. Companies like these are not naive individuals but sophisticated, well-advised commercial operators who can be assumed - to the extent they did share confidential information - to have taken a calculated risk that the potential rewards were worth the possible disclosure of information they shared;
- (d) in this case there is no evidence that disclosure of the information would lead to less information-sharing by private third parties, nor even if it did that this would prove detrimental to the government. Nor is there any evidence that less information-sharing would reduce government's achievement of its economic goals since there is no evidence that the government's economic goals and those of the private companies are aligned. The decision notice relies on mere assertions to this effect;
- (e) private companies can - and indeed the car manufacturers in this case were advised to - expressly assert the confidentiality and sensitivity of the information they provided to government, yet did not do so;
- (f) the Wales Office provided no evidence that commercial interests would be jeopardised, merely asserting a '*risk*' of such which should be given little weight. Moreover, the higher the level of the information shared, the less impact on commercial interests - and in this case there is no evidence of commercial details such as to be of value to competitors having been shared; and

- (g) the summary details of the meetings so far disclosed explain only the subject matter, nothing more, so do not satisfy the requirements of transparency and accountability in an area of strong public interest.

39. By contrast, the factors in favour of disclosure are strong, namely:

- (a) providing the public with greater understanding of business engagement at the Wales Office;
- (b) increasing accountability and public confidence in the integrity of decision-making in an area of crucial importance to the public, including the extent to which CCUS and e-fuels really assist with reducing climate change and its impact when the companies in question have themselves contributed to it: as LA says in his witness statement *"Is this process fair and reasonable? Are the interests of all stakeholders being balanced accordingly?"*;
- (c) allowing the public to see whether or not claims made in public by private companies regarding the scale and extent of their net zero transition activities reflect what they are telling the government ("*greenwashing*") and therefore whether such companies' public and private positions are consistent;
- (d) allowing the public to see whether untested or poorly tested technologies are ready for deployment, viable and affordable (particularly in the context where taxpayers are being asked to contribute to such technologies through subsidies and incentives);
- (e) the overwhelming public interest in tackling the existential threat of climate change, the reason behind the ZEV mandate and other net zero policies. Many of the private companies in this case can reasonably be considered to have contributed to climate change through their emitting activities. It is of strong public interest to establish whether ministers were in private urged to change their policies in ways which favoured the companies urging this;
- (f) as for the specific meetings themselves, the published summaries provide no understanding of what was discussed yet:
 - i. Toyota - this meeting took place at Toyota's request within the consultation period of the government's formal consultation on a ZEV mandate and CO₂ emissions regulation for new cars and vans in the UK published in March 2023.

LA's witness statement says Toyota has been widely reported (as exhibited to the statement) as lobbying against policies that attempt to phase out internal combustion engines in favour of electric vehicles (EV).

According to LA's witness statement, at the time of the request, Toyota was known to have the means (a private meeting with the minister) and motive (it lacked a competitive EV and could not compete in the

market) for lobbying against EVs. Previous research has identified the company's aggressive lobbying against EVs on a global scale.

LA explains that the ZEV mandate was relaxed in various ways in 2025, including that hybrid vehicles (in which Toyota is a market leader) will continue to be sold until 2035. Further, he says, the meeting readout so far disclosed gives no indication of what was discussed yet there is a strong public interest in understanding how Toyota used its privileged access to a minister, and whether the company lobbied against ZEV and if so why.

- ii. Aston Martin - LA's witness statement explains the inefficiency of e-fuels and the public interest in understanding the details of e-fuel proposals made by Aston Martin to the Secretary of State.
- iii. Shell - LA's witness statement explained Carbon Capture, Use and Storage ("CCUS") in which Shell invests.

He says there is a clear public interest in disclosing details of this meeting yet the briefing document is almost entirely redacted. It reveals only that Shell wanted to discuss "carbon shipping" proposals. It is not clear what this means and what its implications are.

LA says that considering the controversy about the effectiveness of CCUS - including its history of failure - as well as the reported £20M public money relating to a decarbonisation project to develop the technology, there is a strong public interest in disclosure to help understand whether government (and therefore taxpayer) investment is worthwhile.

- iv. Hynet - LA says in his witness statement that at the time of the request, Hynet stood to receive billions of pounds of public money through the CCUS cluster programme and other initiatives, even though the technologies are widely accepted to be risky, expensive and unproven.

LA says there is a need to hold ministers to account in whose interests public policy is being made. As it is, the government is set to provide major financial incentives to large profitable companies that are widely believed to be responsible for driving the climate crisis. The public has a right to know about the government's intentions for the Hynet meeting yet the briefing document redacted this information.

40. In short, the public interest favours disclosure of all the information sought so that the government can be held to account for its words and promises behind closed doors. If consultations in private are legitimate, the process is working as it should and will improve public confidence. By contrast, a lack of transparency corrodes public trust even if, in fact, nothing untoward has taken place in private.

Discussion and decision

The facts

41. The panel first considered the relevant facts of this case. Based on the open evidence the panel has seen and heard, the panel has made the following findings of fact based on *'the balance of probabilities'* (that is, what is more likely than not):

- (a) Some information was provided by the Wales Office in response to LA's request.
- (b) The withheld information is contained in the Closed bundle.
- (c) With the exception of DESNZ, none of the parties providing information to the Wales Office expressly stated that the information shared before, during or after the meetings was confidential nor indicated any expectation of confidentiality.
- (d) The Wales Office and the Commissioner rely on the common law duty of confidence.
- (e) The consultation document to which both car companies (Toyota and Aston Martin) responded stated in terms (summarised in para. 33(g) above) that information provided in response to the consultation might be subject to publication or disclosure under EIR.
- (f) As regards the meetings with Toyota and Aston Martin, information by those companies was volunteered as part of a wider consultation exercise on the ZEV mandate.
- (g) Neither car company - as invited by the consultation document - gave any reason for regarding the information they provided as confidential.
- (h) All the third parties (except DESNZ) are sophisticated commercial entities and aware that the Wales Office is not only subject to disclosure obligations under EIR and FOIA but also that some details of the meetings would be published on the GOV.UK website under the government's general transparency obligations.
- (i) Certain information about the various meetings was indeed published on the GOV-UK website, but detail of the matters discussed was not included.
- (j) With the exception of DESNZ, information was shared by the third parties with the government minister (whose department is well-known to be subject to EIR/FOIA duties) without any express reference to confidentiality.
- (k) In the absence of any evidence to the contrary, none of the third parties was consulted by the Wales Office as to whether they consented to disclosure of the information they had provided and, if not, whether their views actually demonstrated that they regarded the information as confidential.
- (l) The Commissioner's own "*Regulation 16 Code of Practice - discharge of obligations of public authorities under the EIR*" with reference to the application of EIR 12(5)(e) expressly states (on p.12) "*...it will not be sufficient for the public authority to speculate about possible harm to the third party's interests without some evidence that the arguments put forward actually reflect the third party's concerns. The public authority*

should therefore consult the third party unless it has prior knowledge of their views..."

- (m) In the absence of any evidence to the contrary, no third party, including DESNZ, was consulted by the Wales Office - nor did the Wales Office have any prior knowledge of the third parties' views - about any legitimate economic interest of theirs which would be harmed by disclosure.
- (n) No third party, including DESNZ and the Wales Office, has volunteered any evidence that their legitimate economic interests would be harmed by disclosure.
- (o) Both energy companies (Shell and Hynet) are, or expect to be, beneficiaries of large publicly funded incentives and subsidies for developing new environmentally friendly technologies such as CCUS and hydrogen-based fuels.

Error of law or wrongful exercise of discretion in balancing the public interest

Is there an error of law in the Commissioner's Decision Notice?

42. Having made the above findings of fact, the remaining issues for the panel in this case are (a) whether the Commissioner made any error of law in his decision and (b) whether the Commissioner ought to have exercised his discretion differently.

Error of law?

43. LA's first ground of appeal is that the Commissioner erred in law in finding that EIR 12(5)(e) is engaged because the information is not subject to a duty of confidence provided by law.
44. Having carefully considered all the evidence and the parties' submissions (including the closed evidence and submissions which the panel has been able to assess for itself), the panel agrees with LA for the following reasons:
- (a) the threshold to justify non-disclosure under EIR is a high one given the statutory presumption in favour of disclosure;
 - (b) under the Coco test, the information must not only have the "*necessary quality of confidence*" but the confidentiality must protect a legitimate economic interest which would, on the balance of probabilities, be harmed by disclosure. However, in this case, neither the Wales Office nor the Commissioner has complied with the Regulation 16 Code of Practice about consulting third parties to establish what harm to their legitimate economic interests would be harmed by disclosure of the withheld information;
 - (c) As regards each of the third parties specifically:

DESNZ

- i. While DESNZ's briefing material to the Wales Office was shared under an explicit expectation of confidence, the panel considers that in the absence of evidence of any legitimate economic interests or any evidence that such interests would be harmed by disclosure, the information supplied by DESNZ and sought by LA is **not** subject to the common law duty of confidence;

Toyota and Aston Martin

- ii. The meetings with each of Toyota and Aston Martin took place at their request as part of a wider government consultation on the ZEV mandate where the consultation document expressly drew consultees' attention to the possibility that their responses would be disclosable under EIR;
- iii. moreover, consultees were expressly invited - if they wanted the information they provided to be treated as confidential - to explain why they regarded it as being confidential. Even then, it was made clear in the consultation document that no assurance could be given that confidentiality could be maintained. There is no evidence that either company gave any reasons for treating the information they shared as confidential or regarded it as such;
- iv. the panel rejects the Commissioner's submission that there was nevertheless an obligation of confidence because, for example, a reasonable person would have considered that the withheld information was imparted in confidence: rather, the panel concludes that neither company had any reasonable expectation of confidence - especially in the absence of any indication by the companies themselves that they thought their information was confidential or requested it to be treated as such;
- v. additionally, there is no evidence that either company was asked whether, or volunteered that, their legitimate economic interests would likely be harmed by disclosure were the information they shared to be disclosed; and
- vi. the panel therefore concludes that the information supplied by the two car companies and sought by LA does **not** meet the test of being subject to the common law duty of confidence.

Shell and Hynet

- vii. Both energy companies are highly sophisticated commercial entities, well aware of the statutory framework under which the Wales Office operates as a public authority, including being subject to onerous disclosure obligations under EIR and FOIA;

- viii. there is no evidence that either Shell or Hynet expressed any desire for or expectation of confidence in relation to the information they shared with the Wales Office;;
- ix. further, there is no evidence that either company was asked whether, or volunteered that, their legitimate economic interests would likely be harmed by disclosure were the information they shared to be disclosed; and
- x. the panel therefore concludes that neither the information provided by Shell nor Hynet was subject to the common law duty of confidence.

45. Given the panel's conclusions about confidentiality, we consider that the Commissioner made an error of law in finding that the exception in EIR 12(5)(e) was engaged.

46. In case, however, we are wrong about that, we went on to consider where the balance of the public interest test lies if, contrary to our judgment, EIR 12(5)(e) is engaged.

Balance of the public interest

47. LA's second ground of appeal is that the Commissioner erred in his exercise of discretion by finding the public interest favours maintaining the exception in EIR 12(5)(e).

48. Again, in light of all the evidence and submissions, the panel agrees with LA for the following reasons:

- (a) As already mentioned, there is a high threshold to justify non-disclosure under EIR given the statutory presumption in favour of disclosure.
- (b) The public interests cited by the Commissioner against disclosure are:
 - i. the risk of damage to the relationship of trust between the Wales Office, DESNZ and the private companies which enables them to work together to meet their economic goals; and
 - ii. the Wales Office has already published summary level details of the meetings

However, the panel is unconvinced by these arguments because:

- iii. the Commissioner relies on the Wales Office's assertions to the above effect rather than any evidence;
- iv. none of the private companies concerned has given any indication that they would regard disclosure of the withheld information as a breach of any relationship of trust (nor, in the panel's judgment, are there any justifiable grounds for them to do so) nor that they (or other similar companies) would likely refuse in future to engage with government were the withheld information to be disclosed;

- v. the summary details published as part of the Wales Office's transparency returns give no information about the matters discussed; and
- vi. the risks identified by the Wales Office and endorsed by the Commissioner are speculative, general rather than specific, and not substantiated by any evidence.

(c) The panel finds far more persuasive LA's submission that private entities take a calculated risk when engaging with ministers and government departments - whom they know are subject to particularly onerous disclosure obligations under EIR - that information they share will be publicly disclosed. We consider it plausible, as LA argues, that this is a price that commercial entities are prepared to pay for privileged access to ministers and the opportunity to influence public policy which impacts upon their economic interests.

(d) The panel finds compelling the factors in favour of disclosing the information advanced by the Appellant as summarised in para. 39 above.

49. Given the panel's conclusions about the respective weight of the factors in withholding the information and disclosing it, we consider that the Commissioner ought to have exercised his discretion in favour of the latter.
50. Overall, the panel is satisfied that the public interest maintaining the exception in EIR 12(5)(e) is outweighed by the greater public interest in the public being able to see for themselves what was raised with a government minister behind closed doors by large private enterprises with significant commercial interests at stake, potentially influencing government policy in an area of such crucial importance as measures intended to address climate change.

Conclusion

51. For the reasons set out above, the panel finds that the Commissioner's decision notice was wrong in law in finding that the requested information engages the exception in EIR 12(5)(e).
52. The panel also finds that the Commissioner ought to have exercised his discretion differently: namely that he should have found that, in all the circumstances of the case, the public interest in maintaining the exception was outweighed by the greater public interest in disclosing the requested information.
53. The appeal is therefore allowed.
54. A substitute Decision Notice is set out at the start of this decision.
55. As the substitute Decision Notice requires the Wales Office to respond to the request for information, to preserve the right to any further appeal, the "Closed bundle" remains confidential under GRC Rule 14 for 35 days from promulgation of this decision or, if later, until the outcome of any appeal of this decision.

Signed:

A handwritten signature in black ink that reads "Alexandra Marks". The signature is written in a cursive, slightly slanted style.

Date: 6 August 2025

Alexandra Marks CBE
First-tier Tribunal Judge