

# Guidance

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## Re-opener Guidance and Application Requirements Document: Appendix 12 - Redaction Policy

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This document provides guidance to the Electricity Transmission (ET), Gas Transmission (GT), Gas Distribution (GD), and Electricity Distribution (ED) on the redactable information categories, the general considerations applicable when making redactions, as well as Ofgem's approach to redaction of information related to Re-opener applications.

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## **1. Introduction**

### **Purpose**

- 1.1 The purpose of this policy is to provide clear guidance on our approach to redaction requests. It implements a consistent, standardised approach across all re-opener applications and publications, and thus helps ensure that any redactions are consistent and justified.
- 1.2 This document sets out our proposal on the approach that will be taken by Ofgem to redaction of information from documents before we<sup>1</sup> publish them, as well as the approach Licensees should take to redaction of information from their published documents. It provides guidance on how to decide which information to remove (redact) from a document prior to its release, publication, or sharing with others, to ensure that the information in the publications is robust enough for readers to make intelligible considerations, while simultaneously protect sensitive and confidential information details, and also comply with our legal obligations.

### **Context**

- 1.3 In the interest of transparency and in line with our duty to promote the interest of consumers, it is important to make relevant information publicly available in the documents we publish. We take the view that where publication of information would promote the interests of consumers, it will generally be permissible for us to publish that information, subject to legal considerations, and other statutory constraints.<sup>2</sup>
- 1.4 Providing information and explanation to consumers and market participants can strengthen regulatory accountability, enable them to make informed choices, and provide routes to engagement that can support innovation.
- 1.5 Making relevant information publicly available in the context of re-opener application submissions, for example, ensures that our decisions serve consumers long-term interests and represent value for money. This approach helps to build trust among consumers/consumer advocacy groups regarding how energy networks are regulated.

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<sup>1</sup> The terms 'we', 'us', 'our' refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

<sup>2</sup> Electricity Act 1989, Section 48, Paragraph 1; Gas Act 1986, Section 35, Paragraph 1

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- 1.6 All relevant information is therefore deemed suitable for publication, unless its publication would result in unwarranted economic harm to the licensee or industry, negatively impact competition, harm to employees, identifiable individuals, or raise public safety/national security concerns. Where licensees request that we make redactions, the request must be sufficiently justified. Where licensees seek to make redactions on their own publications, we expect licensees to publish an explanation of what information has been redacted (i.e. the nature of the redaction) and the reasons for the redaction.

## 2. Approach to Redacting Information

### Approach to Redacting Information

- 2.1 In deciding whether or not to redact the information, the Authority shall have regard to the need for excluding, so far as practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.<sup>3</sup>
- 2.2 We will seek to balance our obligations to consult, to promote the best interest of consumers, and operate in a democratic and accountable way with our data protection and confidentiality obligations.
- 2.3 Redaction is a term used to describe the editing process whereby information is removed from a document. It is a process which is undertaken to render information unreadable. This is done by blocking out individual words, figures, numbers, sentences and paragraphs or by removing whole pages or sections prior to the release of the document. The aim of this policy is to ensure that an open, transparent and clear policy is in place for the redaction of:
- confidential information,<sup>4</sup>
  - commercially sensitive information (Chapter 1 of the Competition Act 1998),<sup>5</sup> and
  - information that may pose a risk to national security.<sup>6</sup>

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<sup>3</sup> Electricity Act 1989, Section 48, Paragraph 2; Gas Act 1986, Section 35, Paragraph 2

<sup>4</sup> Any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including any information provided by any person to the Authority under the Utilities Act 2000, the Gas Act 1986, the Electricity Act 1989, the Energy Act 2004 or any other statute in accordance with its functions as regulator or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.

<sup>5</sup> Commercially sensitive information means information that (a) constitutes a trade secret; or (b) if disclosed would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This type of information identifies or could reveal the cost data of our assets or activities that we source from third party providers on a competitive basis (e.g., goods and services in relation to the construction, operation, and maintenance of the network, consultancy costs).

<sup>6</sup> [Factsheet2-National-Security-Risk-Assessment.pdf \(publishing.service.gov.uk\)](#)

- 2.4 More details on what information is considered to fall into above mentioned categories is provided in Annexes 1, 2 and 3.
- 2.5 We will also ensure that redaction and interpretation of data work together so that, for example, where we cannot publish the information, we might be able to provide a summary, or at least indicate how we use the redacted data. We will adopt a proportionate approach to our disclosures. If redaction would be overly burdensome or would result in publication of information of little value, we will follow the approach outlined below and summarise or explain the unpublished material.

## **Scope**

- 2.6 Numbered paragraph This policy applies to all re-opener submissions with exception of Cyber re-openers,<sup>7</sup> and to both Ofgem and licensees' re-opener publications. Licensees are to comply with the policy when publishing documents (see "Process for publication of Licensee's documents" section below).

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<sup>7</sup> Special Condition 3.2 of the ET Special Conditions: Cyber resilience operational technology Re-opener (CROTt), Price Control Deliverable and use it or lose it adjustment (CROTREt); and Special Condition 3.3 of the ET Special Conditions: Cyber resilience information technology Re-opener (CRITt) and Price Control Deliverable (CRITREt).

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### 3. Legal and Regulatory Requirements

#### Legal and Regulatory Requirements

- 3.1 We will comply with all relevant legislative and regulatory requirements in relation to the publishing, disclosure and also the withholding of information, where appropriate. We will handle, publish, release, share or manage information in accordance with the Utilities Act 2000,<sup>8</sup> Data Protection Act 2018,<sup>9</sup> Freedom of Information Act 2000,<sup>10</sup> and our common law duty of confidentiality, and other relevant legislations.
- 3.2 We take the view that where publication of information would promote the interests of consumers, it will generally be permissible for us to publish that information, subject to consideration of legal and other justified constraints.

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<sup>8</sup> [Utilities Act 2000 \(legislation.gov.uk\)](#)

<sup>9</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](#)

<sup>10</sup> [Freedom of Information Act 2000 \(legislation.gov.uk\)](#)

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## **4. Process for publications**

### **Ofgem's publications**

- 4.1 To achieve the purpose we have stated above, for Ofgem publications, when redacting documents, Ofgem will follow the procedure set out below:
- a. When making a submission containing information that the licensee considers to require redaction in line with the policy, the licensee should highlight areas it considers should be redacted, and explain the reasons it considers redaction is required. The licensee should provide both unredacted and provisionally redacted versions of the relevant documents/files to Ofgem.
  - b. Ahead of publication, Ofgem will review documents for publications and redact what we consider necessary to redact in line with this policy. If it is unclear whether the redaction is necessary, Ofgem may ask the licensee for further evidence or explanation.
  - c. Where necessary, Ofgem may share draft versions of the documents with licensees to elicit their views on proposed redactions.
  - d. Ofgem will publish redacted version of the documents on its website and will, where appropriate and feasible, share un-redacted version with the relevant licensee. Ofgem will also provide an explanation as to why certain information has been redacted.

### **Licensee's publications**

- 4.2. When a licensee is publishing documents in accordance with licence requirements or guidance, the licensee shall follow the procedure set out below:
- a. The licensee shall review the contents of the documents against this policy.
  - b. Where a licensee is confident that information or data falls within this policy then it must apply appropriate redactions.
  - c. If the licensee has any doubt as to whether any information or data falls with the policy, then the licensee must seek confirmation from Ofgem.

- d. On receipt of a request for confirmation from a licensee, Ofgem will review the request and provide guidance to the licensee.
- e. The licensee should publish the documents in line with the guidance that Ofgem has provided as well as explanation the nature of the redactions and reasons for them.

## 5. General Considerations

- 5.1. Ofgem will consider all requests for redaction and will redact documents only where there is a good reason to do so. This will be decided on a case-by case basis provided there is sufficient rationale and justification from the licensee for the information to be redacted. In the interest of transparency, even when certain information is redacted, Ofgem will aim to publish high level details (e.g. the total re-opener value, figures, and values against each work package).
- 5.2. Information that relates to, or has been provided, or produced by an identifiable third party (individual or business) can be disclosed:
- (a) with the consent<sup>11</sup> of the individual or the person for the time being carrying on the business or
  - (b) certain other limited circumstances (as set out in section 105 of the Utilities Act 2000, and other relevant legislations).<sup>12</sup>
- 5.3. Examples of third-party information that may be redacted in accordance with the Utilities Act:<sup>13</sup>
- independent analysis results (i.e. industry engagement)
  - name of the third party.
- 5.4. On receipt of the application, Ofgem will review all documents before disclosure to ensure its publishing would not pose a risk to national security.<sup>14</sup> In the case of information that may pose risk to security, it may be appropriate to withhold the entirety of the documents from publication, in such cases no explanation on the lack of publication needs to be published.

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<sup>11</sup> The third party has to be consulted before and be given a reasonable time to provide their views.

<sup>12</sup> [Utilities Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/26/section/105)

<sup>13</sup> Section 105 of the Utilities Act 2000.

<sup>14</sup> [National security provisions | ICO](#)

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## Annexes

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## **Annex 1 – Confidential Information**

Confidential information means any information that ought to be considered as confidential (however it is conveyed, or on whatever media it is stored) including any information provided by any person to the Authority under the Utilities Act 2000, the Gas Act 1986, the Electricity Act 1989, the Energy Act 2004 or any other statute in accordance with its functions as regulator, or information which Ofgem thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of the licensee or any person, and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.<sup>15</sup>

Confidential Information shall not include information which:

- was public knowledge at the time of disclosure;
- was in the possession of Ofgem without restriction as to its disclosure, before receiving it from the Licensee for the purpose to which redaction is sought;
- is received from a third party (who lawfully acquired it) without restriction as to its disclosure;
- is independently developed without access to the Confidential Information.

Please note that the list above is not exhaustive and its purpose is to provide guidance on what information may be deemed confidential.

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<sup>15</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section/1)

## **Annex 2 – Commercially Sensitive Information**

Commercially sensitive information means information that (a) constitutes a trade secret; or (b) if disclosed would, or would be likely to, prejudice the commercial interests of any person. For example, information that identifies or could reveal tendered unit cost of assets or services that Licensees source from third party providers on a competitive basis (e.g., goods and services in relation to the construction, operation, and maintenance of the network, consultancy costs) etc may be considered commercially sensitive.

To ensure Ofgem's publications provide meaningful and transparent information without distorting the market or disclosing commercially sensitive information, some data may be published in oversimplified/ high level form (e.g. publish aggregated cost estimates, instead of exact unit cost data; or production or consultancy costs in form of the total project value). This will be decided on case-by-case basis.

Commercially sensitive information also includes information that could breach competition law and confidentiality arrangements when disclosed. For instance:

- Customer lists
- production costs
- Purchasing costs
- Sales information
- Pricing information
- Procurement information
- Price sensitive information (information that is likely to have a significant effect on share prices if were made public, i.e. information about energy supplier to cease trading)

### **Non-Disclosure Agreements (NDA) and legally privileged information**

NDAs are a matter for licensees themselves, and on their own are not sufficient reason for redaction or non-compliance with this policy. Where information is covered by an NDA to which the licensee is a party, then the licensee must provide sufficient justification as to why non-disclosure would be in the consumer interest.

We expect licensees to work with us in an open and co-operative way, and not to use NDA to prevent or limit disclosure of relevant information and details in their publications.

## **Annex 3 – National Security**

In accordance with Section 24 of Freedom of Information Act,<sup>16</sup> information that may pose a risk or threat to national security should be redacted from the document. This has to be decided on case by case basis. When deciding whether the information should or should not be redacted due to possible risk to national security, actual consequences of disclosing the information must be considered.

In context of this Policy, national security means security of the United Kingdom and its people. Although there are no standardised definitions for “national security”, the Information Tribunal provided further details in the 2007 Norman Baker versus the Information Commissioner and the Cabinet Office) appeal decision, of what it considers as “national security.”<sup>17</sup> According to the Tribunal, the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people. Even actions targeted at a foreign state may indirectly pose risk to the security of the UK.

The definition provided by Tribunal is fairly general which allows its flexible interpretation. This ensures the definition can be adapted to ever changing environment and thus address wide range of emerging threats.

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<sup>16</sup> [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/36/section/24)

<sup>17</sup> [Microsoft Word - Norman Baker MP v Information Commissioner and Cabinet Office and National Council of Civil Liberties correct \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/cases/microsoft-word-norman-baker-mp-v-information-commissioner-and-cabinet-office-and-national-council-of-civil-liberties-correct)

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