

# Guidance

## Re-opener Guidance and Application Requirements

### Document: Appendix 12 – Redaction Policy: Version 1

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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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## Contents

<b>1. Introduction .....</b>	<b>4</b>
Purpose .....	4
Context.....	4
<b>2. Approach to Redacting Information .....</b>	<b>6</b>
Approach to Redacting Information.....	6
Scope .....	7
<b>3. Legal and Regulatory Requirements.....</b>	<b>8</b>
Legal and Regulatory Requirements.....	8
<b>4. Process for publications .....</b>	<b>9</b>
Ofgem's publications .....	9
Licensee's publications.....	9
<b>5. General Considerations .....</b>	<b>11</b>
<b>Annexes .....</b>	<b>12</b>
Index.....	12
<b>Annex 1 – Confidential Information .....</b>	<b>13</b>
<b>Annex 2 – Commercially Sensitive Information.....</b>	<b>14</b>
<b>Annex 3 – National Security .....</b>	<b>15</b>
<b>Annex 4 - Non-Disclosure Agreements (NDA) .....</b>	<b>16</b>
Legally privileged information .....	16

## 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. The intention is to ensure that the information in the publications is robust enough for readers to make intelligible considerations, while protecting sensitive and confidential information, and complying with legal obligations.

### Context

- 1.3 In the interest of transparency and in line with our duty to promote the interest of both existing and future consumers,<sup>2</sup> 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>3</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

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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 4; Gas Act 1986, Section 35, Paragraph 4

<sup>3</sup> Electricity Act 1989, Section 48, Paragraph 1; Gas Act 1986, Section 35, Paragraph 1

helps to build trust among consumers/consumer advocacy groups regarding how energy networks are regulated.

- 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, or would otherwise conflict with Data Protection obligations or other Legal or Regulatory requirements as set out in paragraph 3.1 below. 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 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>4</sup>
- 2.2 We will consult any individual or body before deciding to publish any information or advice relating to that particular individual or body of persons.<sup>5</sup>
- 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>6</sup>
  - commercially sensitive information<sup>7</sup> (Chapter 1 of the Competition Act 1998), and
  - information that may pose a risk to national security.<sup>8</sup>
- 2.4 More details on what information is considered to fall into above mentioned categories is provided in Annexes 1, 2 and 3.

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<sup>4</sup> Electricity Act 1989, Section 48, Paragraph 2; Gas Act 1986, Section 35, Paragraph 2

<sup>5</sup> Electricity Act 1989, Section 48, Paragraph 2A; Gas Act 1986, Section 35, Paragraph 2A

<sup>6</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>7</sup> Commercially sensitive information for this purpose means information or data that if disclosed would, or would be likely to, unfairly prejudice the commercial interests of any person (including the party holding it). This type of information may include cost, asset volume, or activity data that if released would likely be detrimental to a network company's ability to effectively operate procurement processes to the ultimate benefit of energy consumers.

<sup>8</sup> [Factsheet2-National-Security-Risk-Assessment.pdf \(publishing.service.gov.uk\)](#)

- 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 This policy applies to all Re-opener submissions with exception of Cyber Re-openers,<sup>9</sup> and to both Ofgem and licensees' Re-opener publications. Licensees are to comply with this policy when publishing documents (see "Process for publication of Licensee's documents" section below).

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<sup>9</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>10</sup> Data Protection Act 2018,<sup>11</sup> Freedom of Information Act 2000,<sup>12</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>10</sup> [Utilities Act 2000 \(legislation.gov.uk\)](#)

<sup>11</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](#)

<sup>12</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 publication and redact what we consider necessary to redact in line with this policy. If it is unclear whether the redaction is necessary, Ofgem will ask the licensee for further evidence or explanation.
  - c. Where we consider it necessary, Ofgem will share draft versions of the documents with licensees to elicit their views on proposed redactions.
  - d. Ofgem will publish the redacted version of the documents on its website and will, where appropriate and feasible, share the un-redacted version with the relevant licensee. Ofgem will also provide appropriate explanation as to why certain information has or has not 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 within 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 in a timely manner to enable the licensee to publish such documents in accordance with its requirements or to extend the deadline for the publication.
- e. The licensee should publish the documents in line with the guidance that Ofgem has provided as well as explanation of 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 in accordance with paragraph 2.4 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 and values against each work package), provided it is consistent with the requirements set out in section 2.3
- 5.2 Information that relates to, or has been provided, or produced by an identifiable third party (individual or business) shall not be disclosed except:
- (a) with the consent<sup>13</sup> of the individual or the person for the time being carrying on the business,
  - (b) for the reasons set out in subsection (3) of section 105 of the Utilities Act 2000, or
  - (c) for the purposes set out in subsection (4) of section 105 of the Utilities Act.<sup>14</sup>
- 5.3 On receipt of the application, Ofgem will review all documents before disclosure and consider whether its release would pose a risk to national security.<sup>15</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>13</sup> The third party has to be consulted before and be given a reasonable time to provide their views.

<sup>14</sup> [Utilities Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/31/section-105)

<sup>15</sup> [National security provisions | ICO](https://ico.org.uk/for-the-public/national-security/)

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## Annexes

### Index

Annex	Name of Annex	Page No.
1	Confidential Information	13
2	Commercially Sensitive Information	14
3	National Security	15
4	Non-Disclosure Agreements (NDA)	16

## **Annex 1 – Confidential Information**

A1.1 Confidential information means any information that ought to be considered as confidential (however it is conveyed, or on whatever media it is stored) including:

- (a) 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,
- (b) information which, if disclosed, would unfairly harm the legitimate business or commercial interests of a licensee, the party to which the information relates, or another third party,
- (c) all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.<sup>16</sup>

A1.2 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.

A1.3 Please note that the list above is not exhaustive and its purpose is to provide guidance on what information may be deemed non-confidential.

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<sup>16</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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

- A2.1 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 party holding it). 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 and may be detrimental to a network company's ability to effectively operate procurement processes to the ultimate benefit of energy consumers if disclosed.
- A2.2 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 simplified/high level form (e.g. aggregated costs instead of exact unit cost data; or total project values rather than disaggregated component costs). This will be decided on case-by-case basis.
- A2.3 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).

## **Annex 3 – National Security**

- A3.1 In accordance with Section 24 of Freedom of Information Act,<sup>17</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 a possible risk to national security, consideration should be given to the potential consequences of disclosing the information, as well as to the provisions and guidance contained in the National Security Act 2023<sup>18</sup> and the National Security Strategy 2025<sup>19</sup>.
- A3.2 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>20</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 a risk to the security of the UK.
- A3.3 The definition provided by the Tribunal is fairly general which allows its flexible interpretation. This ensures the definition can be adapted to an ever-changing environment and thus can address a wide range of emerging threats.

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<sup>17</sup> [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2000/36/section/24)

<sup>18</sup> [National Security Act 2023](#)

<sup>19</sup> [National Security Strategy 2025: Security for the British People in a Dangerous World \(HTML\) - GOV.UK](#)

<sup>20</sup> [Microsoft Word - Norman Baker MP v Information Commissioner and Cabinet Office and National Council of Civil Liberties correct \(tribunals.gov.uk\)](#)

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## **Annex 4 - Non-Disclosure Agreements (NDA)**

- A4.1 NDAs are a matter for licensees themselves, and on their own are not sufficient reason for redaction or non-compliance with this policy. While we will acknowledge the existence of an NDA, we will give precedence to our obligation Under Section 48 of the Electricity Act to promote the interest of consumers.
- A4.2 We are also subject to our own legal obligations such as Freedom of Information (FOI) as set out in The Freedom of Information Act 2000<sup>21</sup>. NDA with third party does not automatically override the FOI obligations and have to be considered on a case-by-case basis.
- A4.3 NDA may cover a variety of information, including confidential information, commercially sensitive information and information that may pose a risk or threat to national security.
- A4.4 NDAs will be taken into account as evidence of confidentiality. 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. Whether information covered by NDA will be disclosed to the public will be decided on a case-by-case basis.
- A4.5 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.

### **Legally privileged information**

- A4.6 Legally privileged information refers to sensitive and confidential information or advice shared between a client and their lawyer and as such cannot be subject to disclosure. Legally privileged information on its own is a sufficient reason for redaction.

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<sup>21</sup> [Freedom of Information Act 2000](#)