

Information Requests

Email:

information.requests@ofcom.org.uk

Reference: 00514596

5 February 2018

Freedom of Information: Right to know request

Thank you for your email of 28 January, requesting information under the Freedom of Information Act 2000 ('the Act' or 'FoIA').

In relation to Ofcom's published Consultation, '*Personal numbering, Review of the 070 number range*¹', you have asked for further information in relation to a number of the paragraphs (or, as set out in your request, 'clauses') and tables included in that document. We have responded to each aspect of your request below.

1. Information that is not held by Ofcom

You have referred to clause A8.50 of the Consultation, where we state that we have sought more up-to-date information from the National Fraud Intelligence Bureau ('NFIB'). We have not yet received that information and therefore do not currently hold it.

2. Information that Ofcom holds and is able to disclose

Having reviewed your request for information, we are pleased to confirm that there are further pieces of information which we can provide.

a) You have referred to paragraph A8.53 of the Consultation, and the email received from the Serious Organised Crime Authority ('SOCA'). The full paragraph states:

"This representative noted that the 070 number range "is a well known enabler of this type of fraud." The representative went on to say that "SOCA considers that victims of fraud are unaware that 070 number may potentially not go through to somebody in the UK, due to confusion with UK mobile numbers, and that in many cases of mass marketing fraud this is exploited by criminals. SOCA would therefore support the reconsideration of a move away from the 070 range." (Underlined material showing the text that was redacted from the Consultation, which is now being disclosed).

b) You have also referred to the redactions to paragraphs A7.27, A8.48 and A8.49 of the Consultation. Those redactions are as follows:

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0020/108245/consultation-070-number-range.pdf

- (i) Paragraph A7.27: “The National Fraud Intelligence Bureau, report on the scale of fraud offences where Personal Numbering Services – specifically prefixed 070/076 have been reported to Action Fraud in the period 1 January 2011 to 31 July 2013”;
- (ii) Paragraph A8.48: “The National Fraud Intelligence Bureau (NFIB) provided a report to Ofcom in 2013 which gives an overview of the scale of fraud offences where Personal Numbering Services – specifically including prefixed 070 (and 076²) have been reported to Action Fraud in the period 1 January 2011 to 31 July 2013”; and
- (iii) Paragraph A8.49: “In this period, the NFIB reported 4,596 offences reported to Action Fraud that referenced 070 or 076 numbers (approximately 4.9 reports per day) with a reported loss³ of £17,170,522 (approximately £1,324 per day). Whilst this overall figure included reports relating to the 076 number range, of the 4,596 offences reported in relation to these number ranges, 4,415 (96.1%) of these were about 070 numbers and only 175 about 076 numbers”.

c) Finally, you have referred to the redaction we have made to footnote 177 (paragraph A8.46) of the Consultation. This footnote sets out the system by which BT raises with other communications providers the cases where it suspects the Artificial Inflation of Traffic (‘AIT’). It states that:

“BT explained that it receives an ‘A1 retention notice’ from the Originating Network Operator (ONO) providing details of why it suspects that traffic has been artificially inflated by the Terminating Network Operator (TNO). BT then forwards the received A1 notice to the TNO and temporarily deducts the value set out in the A1 notice from the payment due to the TNO. The TNO has until AIT day 34 to reject the A1 notice. If the notice is not rejected by AIT day 34 then BT permanently withholds the payment from the TNO and provides a credit to the ONO. If the TNO rejects the A1 notice then the ONO has until AIT day 49 to file a dispute notice. When a dispute notice is filed then the case then enters a 10 month dispute period. The ONO and TNO use the 10 month period to try and resolve the case amicably. If the case remains unresolved when the 10 months has expired and legal action has not been instigated, the case is ruled in favour of the party who raised the A1 notice.”

3. Information that Ofcom holds but is not able to disclose.

This category of information covers the remaining paragraphs and tables to which you have referred. Where we are unable to provide the information you have requested, we have sought to be as helpful as possible by providing descriptions of the material sought.

a) The ‘joint venture’ information.

2 The accompanying footnote to this information in the non-confidential version of the Consultation is: “076 numbers are not being considered as part of this review. See footnote 34.”

3 The accompanying footnote to this information in the non-confidential version of the Consultation is: “Reported losses are provided by the victim and are not verified”.

This aspect of your request relates to redactions we have made in paragraphs 4.22 and A8.58, where you have asked for the date on which Ofcom was approached by the relevant companies, and (in relation to A8.58), the final sentence in that paragraph.

The reason that this information was redacted from the Consultation was to minimise the risk of identifying the two companies concerned, in circumstances where the proposal to enter into a joint venture is highly confidential and may still be in contemplation, either in the UK or internationally. On that basis, while we are able to confirm that Ofcom was approached five to ten years ago, section 393(1) of the Communications Act 2003 prohibits us from disclosing any more detailed information pertaining to these companies.

Under section 393(1), information which pertains to a business and which Ofcom has obtained in the course of undertaking its work must not be disclosed, unless that business consents or a particular statutory gateway applies. In this case, we do not have the consent of the relevant companies to disclose their identities, nor the date on which they approached Ofcom. We are also of the view that none of the statutory gateways apply. Disclosing information in breach of section 393(1) may constitute a criminal offence.

Where section 393(1) of the Communications Act 2003 applies, section 44 of the FoIA will also apply. Section 44 provides that, where disclosure is prohibited under another enactment (in this case, the Communications Act 2003), it will also be exempt from disclosure under the FoIA. Section 44 is an absolute exemption and does not require Ofcom to balance the public interest in withholding the information against the public interest in disclosing it (ie. the 'public interest test') before the exemption applies.

b) The 'PSA' information.

This aspect of your request relates to the information which has been redacted in paragraphs A8.56(c) and (d) of the Consultation. That information relates to specific on-going investigations by the Phone-paid Services Authority ('PSA'), provided to Ofcom on a confidential basis.

This information is being withheld on the basis of sections 31 and 41 of the Act. In applying section 31, we have balanced the public interest in disclosure against the public interest in withholding the information, as set out in Annex A. Section 41 is an 'absolute' exemption under the Act, and therefore does not require Ofcom to undertake the 'public interest' test.

Under sections 31(1)(g) and 31(2)(c) of the Act, Ofcom may withhold information where its disclosure would, or would be likely to, prejudice Ofcom's ability to ascertain whether or not regulatory action is required. Ofcom may also withhold information under sections 31(1)(a)-(c) where its disclosure would, or would be likely to, prejudice the prevention or detection of crime, or the apprehension or prosecution of offenders, or the administration of justice.

Under section 41 of the Act, Ofcom may withhold information where it has been provided to us in confidence. In this case, the PSA provided us with the information requested on the basis that we would not disclose it further.

c) The 'business' information

This aspect of your request relates to the information which has been redacted from paragraph A8.47 and Tables A8.4 – A8.7, A9.4 and A9.6 of the Consultation. It comprises information which Ofcom has obtained from BT and other communications providers and is considered to be highly commercially confidential. For the reasons explained above, Ofcom is withholding this information under section 393(1) of the Communications Act 2003 and section 44 of the FoIA.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

Information Requests

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

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| <p>Section 31: Law Enforcement Section 31 exempts information if disclosure would or would be likely to prejudice, among other things:</p> <ul style="list-style-type: none"> • Whether any person has failed to comply with the law; • Whether any person is responsible for conduct which is improper; • Ofcom’s exercise of its functions for the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise; • Section 31 is subject to a public interest balance. | |
| <p>Factors for disclosure</p> | <p>Factors for withholding</p> |
| <ul style="list-style-type: none"> • Open policy making and public confidence in regulated activities. | <ul style="list-style-type: none"> • As a sector regulator, Ofcom is under a statutory duty to regulate in a way that is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. In order to fulfil this duty and perform its functions as effectively as possible, Ofcom needs information in order to determine whether or not markets are operating properly and whether certain remedies are needed. In order to obtain the information it needs, Ofcom depends heavily on its on-going relationship with stakeholders, such as (in this case) other regulatory bodies like the PSA. Without this information, there is a risk that Ofcom may not be fully informed in identifying areas where regulatory intervention is needed • It is also important that bodies who share their information with Ofcom are not prejudiced by doing so, particularly where such bodies may also be relying on the same information in order to undertake their own law enforcement or regulatory activities. • Disclosure of confidential information by Ofcom is likely to undermine the trust and confidence that other regulatory bodies place in us with respect to the use of their information (particularly in circumstances where such bodies are also engaged in their own sensitive investigations). In turn, this is likely to have a ‘chilling’ effect on any further |

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| | confidential information that Ofcom might otherwise receive on an informal basis from law enforcement agencies in future. |
| Reasons why public interest favours withholding information | |
| <ul style="list-style-type: none"> • Ofcom is aware that the information which the PSA has provided to it is currently subject to an ongoing investigation. It is imperative that, in order to avoid any prejudice to the PSA in undertaking its regulatory functions, Ofcom withholds this information while those investigations are still in progress. • A likely consequence of disclosure is that other regulatory bodies will be less likely to provide information to Ofcom on an informal basis. If so, there is a risk that Ofcom will be denied the opportunity to be fully informed of all the necessary facts and circumstances which might otherwise justify regulatory intervention. As a consequence, Ofcom’s ability to undertake its functions in the public interest will be impaired. | |