

Freedom of Information: Right to know request

Thank you for your request for information regarding Ofcom's enforcement of its general demand for information issued in August 2011 under section 135 of the Communications Act 2003 (the Comms Act) to persons liable to pay administrative charges under section 38 of that Act (the General Demand). We received this request on 31 July 2017, and have considered it under the Freedom of Information Act 2000 (the FoIA).

The request

You asked for information regarding:

- a) whether Ofcom has a monitoring practice to ensure compliance with the General Demand of information;
- b) whether at any time since the date of publication of the General Demand for information, Ofcom has proactively issued individualised information requests to assess whether a person is liable to pay administrative charges under section 38 of the Act;
- c) the number of persons paying administrative charges to Ofcom as a result of voluntarily responding to the general demand for information in the last 7 years; and
- d) the number of persons paying administrative charges as a result of an individualised information request sent by Ofcom determining that an administrative charge was liable to Ofcom under section 38 in the last 7 years.

Ofcom's response

We hold information in relation to part (a) of your request. The information is being withheld as it falls under the exemption in section 31 of the FoIA, which relates to law enforcement and the functions of a public authority. In particular, section 31(1)(g) says:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice – ...

...(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

Section 31(2)(c) says:

"The purposes referred to in subsection (1)(g) to (i) are – ...

... (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise."

Under section 38 of the Comms Act, Ofcom is required to set licence fees in the broadcasting sector and administrative charges in the electronic communications sector in accordance with charging principles that it has published. It can require a person to provide information for the purposes of ascertaining or verifying the charges payable by that person under section 135 of the Comms Act.

If a person fails to comply with a section 135 notice, Ofcom may take enforcement action. Sections 138 to 144 of the Comms Act set out the relevant provisions. For example, Ofcom may impose a financial penalty or prosecute any offences of failing to provide the requested information or of providing false information.

Disclosure of the information requested would, or would be likely to prejudice Ofcom's ability to ascertain whether regulatory action should be taken in the circumstances when a person fails to comply with the General Demand.

Section 31 is a qualified exemption, subject to a public interest test. Broadly, this means that the information should only be withheld under the exemption where the public interest in doing so outweighs that in favour of disclosure. The public interest test we have undertaken on the application of section 31(1)(g) is attached in the Annex. Having completed the balancing exercise, we have concluded that the public interest is best served by not releasing the information falling under the exemption.

It is likely that other exemptions under the Act, such as the exemption in section 36 (prejudice to effective conduct of public affairs) would also apply in relation to part (a).

We also hold information in relation to part (b) of your request. However, this information is being withheld as it falls under the exemption in section 44(1) of the FoIA, which states that information is exempt if disclosure of that information is prohibited by or under another enactment. The information we hold is information relating to a business and cannot be disclosed under section 393(1) of the Communications Act 2003 unless that business consents, or one of a number of other statutory gateways are satisfied. We do not have the consent of the business to disclose this information, nor are any of the other gateways for disclosure met in this case.

We do not hold information in relation to parts (c) and (d) of your request. It is worth noting that the General Demand imposes an obligation on persons liable to pay administrative charges to respond and therefore there are no voluntary responses.

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