

Reference: 525346

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### **Freedom of Information: Right to know request**

Thank you for your request for information where you asked about 'The Drug Dealing Telecommunications Restriction Orders Regulations 2017' (DDTRO).

This was received by Ofcom on 6 March and it has been considered under the Freedom of Information Act 2000.

You stated that you are interested in information held from 1 January 2015. We have therefore searched for information from 1 January 2015 to 6 March 2018. Please find below our response to each of the questions you asked.

We also thought it would be helpful to explain Ofcom's role, and that of the Home Office's, in relation to the DDTRO, to help provide context to our response.

The DDTRO is a piece of legislation made by the Secretary of State for the Home Office under section 80A of the Serious Crime Act 2015. In the development and drafting of the DDTRO, the Home Office consulted Ofcom, in our role as an expert sectoral regulator, about certain matters relating to the operation of electronic communications networks and services (fixed and mobile phone networks and services).

We provided information to the Home Office on that basis, but the DDTRO regulations are not legislation made by Ofcom or in which we played a wider role. We therefore only hold a limited amount of information falling within your request.

*- Any documents from January 1st 2015 to the present which relate to the development and/or drafting of legislation and/or regulations of DDTROs.*

Ofcom holds information falling within this part of your request. It is provided with this response.

Certain information has been redacted to comply with specific provisions under the Act. These include:

- Information which relates to law enforcement and the functions of a public authority. This is withheld as it falls under the exemption in section 31 of the Act. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. Annex A to this letter sets out the

exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay;

- Information which relates to personal information and which provides that such information is exempt under section 40 of the Act; and
- Information with respect of which a claim to legal professional privilege could be maintained in legal proceedings. This is withheld as it falls under the exemption in section 42 of the Act. Annex B to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay

Furthermore, we have redacted information which falls outside the scope of your request. Other exemptions under the Act may also apply.

*- Any guidelines from January 1st 2015 to the present which relate to the handling and/or processing of DDTRs.*

We do not hold any guidelines between 1 January 2015 and 6 March 2018 which relate to the handling and/or processing of DDTRs.

If you have any queries, then please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk). Please remember to quote the reference number above in any future communications.

Yours sincerely,

**Jerin John**

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

### Section 31: Law Enforcement

Section 31 exempts information if disclosure would or would be likely to prejudice, among other things:

- 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.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> <li>• Open policy making and public confidence in regulated activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Disclosure would be likely to deter stakeholders from supplying information for the purpose of an enquiry phase when considering grounds for an investigation as fully and frankly as possible. Companies would be likely to be deterred by disclosure from co-operating fully with regulatory bodies thus prejudicing the exercise of Ofcom's regulatory functions.</li> </ul>
<b>Reasons why public interest favours withholding information</b>	
<ul style="list-style-type: none"> <li>• It is not in the public interest to disclose this information as the regulatory system is intended to allow Ofcom to conduct enquiries to ascertain any grounds to support a formal investigation without disclosure of details. Disclosure would deter companies from co-operating with Ofcom and thus protract the enquiry phase.</li> <li>• It is important that Ofcom is able to quickly determine which matters to investigate and to commit resources because of the serious commitment of personnel and time for Ofcom and interested stakeholders when launching an investigation. Allowing for a regulatory environment in which parties will provide information freely and openly is to be encouraged because it allows for the more effective use of limited Ofcom resources.</li> </ul>	

## Annex B

**Section 42: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.**

<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"><li>• Open policy making and public confidence in regulated activities.</li></ul>	<ul style="list-style-type: none"><li>• Ofcom considers the request for Ofcom's internal legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings. It is advice given by Ofcom's own salaried in-house legal advisers and is connected with the giving or obtaining of legal advice.</li></ul>
<b>Reasons why public interest favours withholding information</b>	
<ul style="list-style-type: none"><li>• It is in the public interest that policy decisions taken by Ofcom are taken in a fully informed legal context, where relevant. Ofcom therefore needs high quality effectively obtained legal advice for the effective conduct of its business. That advice needs to be given in context, and with a full appreciation of the facts. It needs to be sought and given in a timely fashion to ensure that policy develops in a fully informed way.</li><li>• Legal advice cannot be effectively obtained unless Ofcom is able to put all the facts before its in-house legal advisers without fear that they may afterwards be disclosed and used to its prejudice. Without such effectively obtained advice, the quality of Ofcom's decision making would be much reduced because it would not be fully informed and this would be contrary to the public interest.</li></ul>	