

Reference: 291530

22 July 2016

Julia Snape
Information requests

information.requests@ofcom.org.uk

Freedom of Information Act 2000 (the “Act”)

Thank you for your request of 22 June for information about the Memorandum of Understanding between Ofcom and the National Offender Management Service ('NOMS'), and between Ofcom and the Scottish Prison Service ('SPS'). We have considered your request under the Act.

Your request

Your request said:

- “1. Point 10 of the NoMs MoU requires them to provide you with a list of all the institutions where mobile blocking technology is deployed. Can you supply the most recent list? If not, can you tell me how many institutions are on the current list?*
- 2. The complaints procedure set out in the MoUs allows operators to raise complaints over interference outside prison grounds. How many times have network operators made use of this complaints procedure to date? Which prisons were the subject of complaints, if there have been any?*
- 3. Points 24 and 25 allow for OFCOM to conduct monitoring outside prisons where IMSI catchers are deployed. How often have "queries" been raised with NoMs or SPS about the equipment used over the lifetime of the MoU to date? If queries have been raised - which institutions did they pertain to?*
- 4. Has the MoJ or the SPS been forced to pay any financial compensation to the network operators as a consequence of their blocking technology causing wider network disruption?*
- 5. Additionally, I am in contact with Privacy International who have concerns about the government use of this blocking technology. Can you confirm what measures OFCOM are taking to preserve the privacy of members of the public who may be affected by government use or indeed third party use of IMSI catchers more broadly?”*

Ofcom's response

- 1. Point 10 of the NoMs MoU requires them to provide you with a list of all the institutions*

where mobile blocking technology is deployed. Can you supply the most recent list? If not, can you tell me how many institutions are on the current list?

I can confirm that we hold the information you have asked for. However, we have decided that it is exempt from disclosure under Section 31(1)(f) of the Act as we consider release of this information would be likely to prejudice the maintenance of security and good order in prisons. The application of this exemption is subject to a public interest test and we have set out our reasoning for applying the exemption in Annex A. In this case, we have concluded that the public interest is best served by withholding this information.

2. The complaints procedure set out in the MoUs allows operators to raise complaints over interference outside prison grounds. How many times have network operators made use of this complaints procedure to date? Which prisons were the subject of complaints, if there have been any?

Network operators have raised informal enquiries about interference a total number of four times to date.

There were two instances of reported interference in 2011, which involved the very earliest generation of blocking units. These units and further units of similar design were replaced with modified equipment, resolving the issue.

A third query was raised in 2012, where our investigation confirmed that the prison site was not the cause of the reported interference.

A fourth query was raised in 2014, which was resolved by the relevant mobile operator's technical contact without Ofcom's involvement. We do not know whether the prison site or another source of interference was identified in this case.

We are not aware of any further queries since the fourth query in 2014, nor any that operators may have made directly to NOMS or SPS.

We are unable to disclose information about the prisons involved as this is exempt from disclosure under Section 31(1)(f) of the Act, as set out above and in Annex A.

3. Points 24 and 25 allow for OFCOM to conduct monitoring outside prisons where IMSI catchers are deployed. How often have "queries" been raised with NoMs or SPS about the equipment used over the lifetime of the MoU to date? If queries have been raised - which institutions did they pertain to?

Ofcom has not, to date, raised any queries under paragraphs 24 and 25 of the MoUs. We do not hold information as to whether queries have been raised directly by network operators with NOMS or SPS.

4. Has the MoJ or the SPS been forced to pay any financial compensation to the network

operators as a consequence of their blocking technology causing wider network disruption?

We do not hold information in relation to this aspect of your request.

5. Additionally, I am in contact with Privacy International who have concerns about the government use of this blocking technology. Can you confirm what measures OFCOM are taking to preserve the privacy of members of the public who may be affected by government use or indeed third party use of IMSI catchers more broadly?

It is NOMS and the SPS, rather than Ofcom, who are responsible for owning, developing, installing and using IMSI catchers and, therefore, for ensuring that they comply with their legal obligations, including with respect to individual privacy rights where the Information Commissioner's Office is the primary enforcement body. Ofcom's role, as reflected in the MoUs, is to ensure that the use of such devices does not cause harmful interference to the use of the electro-magnetic radio spectrum by licensed mobile network operators, in line with its statutory duties to ensure the optimal use of this particular resource. NOMs and/or the SPS may therefore be the appropriate bodies to whom to direct this aspect of your request.

I hope you find the information provided useful.

Kind regards

Julia Snape

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

Section 31(1)(f): Law Enforcement

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

- the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

Section 31 is subject to a public interest balance.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • The public have an interest in knowing that prisons operate a robust security regime and are alert to smuggling and possession of contraband items and the technologies used to combat these threats. • They similarly have an interest in seeing that relevant safeguards and protections are in place with regard to the effects of the relevant technology on mobile phone signals inside and outside prisons • We recognise that disclosing the information would provide greater transparency and enable the public to fully appreciate the risks and threats associated with mobile phones and the process and procedures that prison undertake to tackle this threat and the cost associated with this technology. 	<ul style="list-style-type: none"> • The presence of illicit mobile phones in prisons presents a serious risk to the security of prisons and the safety of the public. They can be used for a variety of criminal purposes and are strongly associated with drug trafficking, violence and intimidation. Therefore, releasing sensitive information about the institutions where mobile phone blocking technology is in place (or the numbers of such institutions), or the specific prisons where Ofcom has undertaken investigations into reported interference, may alert the public that security arrangements are in place and thereby allow them to be circumvented. This would likely prejudice the maintenance of security and good order in prisons and undermine rehabilitation and resettlement efforts. Such consequences would not be in the public interest. • Prisons have a duty of care to ensure the safety of all prisoners, staff, and visitors to prisons. They are required to manage threats to security and order which impact directly on the safety and well-being of individuals and to the establishment as a whole. Maintaining effective control of the prison is key to protecting the safety of persons within the establishment and in turn the safety of the public.
<p>Reasons why public interest favours withholding information</p>	

- Security, control and order underpin all activity within prisons. Without these vital elements, no prison regime can function effectively. The safety and quality of life of everyone living in, working in and visiting a prison is dependent on there being a stable and ordered environment.
- Further, the illicit use of mobile phones in prisons may contribute to criminal conduct being perpetrated, thereby undermining the purpose and effective functioning of the national penal system.
- Each of these consequences, or likely consequences, is against the public interest. On that basis, having balanced the public interest in disclosing the requested information against the public interest in withholding it, we are satisfied that the information should be withheld in this case.