

Reference: 461246

24 November 2017

Julia Snape  
Information requests

information.requests@ofcom.org.uk

## Freedom of Information: Right to know request

Dear

Thank you for your request for information dated 9 August asking for correspondence between Ofcom and any Government Department or Mobile Network Operator ('MNO') on the subject of COMUGs, national security and related issues concerning Section 5 of the Communications Act 2003 from 10 February to 9 August 2017. Ofcom has considered this under the Freedom of Information Act 2000 (the Act).

As you will be aware, Ofcom published a Statement on GSM Gateways on 6 July 2017 available at: [https://www.ofcom.org.uk/consultations-and-statements/category-2/commercial-multi-user-gateway-review?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=comugs-statement](https://www.ofcom.org.uk/consultations-and-statements/category-2/commercial-multi-user-gateway-review?utm_source=updates&utm_medium=email&utm_campaign=comugs-statement)

I am writing to confirm that Ofcom has now completed its search of relevant documents falling within your request.

For information between Ofcom and Government departments for the period up to 10 July please refer to the published FOI response via the following link: <https://www.ofcom.org.uk/about-ofcom/foi-dp/foi-responses>. Please see under Spectrum for 2017 with the title: **Correspondence between Ofcom and the Home Office regarding COMUGs.**

We hold information between Ofcom and Government departments between 11 July and 9 August. This is attached subject to certain redactions under S36 of the Act.

Section 36 exempts information from disclosure if it would, or would be likely to, inhibit the free and frank provision of advice or views for the purposes of deliberation or prejudice the effective conduct of public affairs. This is a qualified exemption and is 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 is detailed in Annex B to this letter. In the letter in Annex A, Steve Gettings as a "qualified person" confirms that in his reasonable opinion it is not in the public interest for Ofcom to disclose the information.

Redactions have also been made to limited parts of the attached documents which relate to personal data. This information is being withheld as it falls under the exemption section 40 of the Act, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

We do not hold correspondence between Ofcom and the MNOs that falls within scope of your request for the period stated.

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,

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 exception 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**

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

*Section 36 exemption*

The information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act.

I am a "qualified person" as defined in section 36(2) of the Freedom of Information Act 2000 and duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so would or would be likely to prejudice the effective conduct of public affairs.

Also, in applying this exemption I have had to balance the public interest in withholding the information against the public interest in disclosing the information.

I have set out in Annex B the exemption in full, as well as the factors I considered when deciding where the public interest lay in this case.

If you have any queries about this letter, please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk).

Signed .....Steve Gettings.....

Date.....24 November 2017.....

Steve Gettings  
Secretary to the Corporation  
Ofcom

**Annex B**

**Section 36: Prejudice to Effective Conduct Of Public Affairs**

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation; or
- prejudice the effective conduct of public affairs.

**Key points:**

- Section 36 can only be used if, in the **reasonable view of a "qualified person"**, disclosure of the requested information would have one of the specified effects.
- The application of section 36 is subject to a public interest balance.

<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"> <li>• The desirability of citizens being confident that decisions are taken on the basis of the best available information;</li> <li>• Knowledge that the arguments relating to a debate will be disclosable may improve the quality of those arguments.</li> </ul>	<ul style="list-style-type: none"> <li>• Ofcom, as a sector regulator, depends heavily on its on-going relationship with Stakeholders. Stakeholders would be less willing to come forward and discuss necessary policy issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that what they said to us would be made public.</li> <li>• In addition, to regulate effectively, Ofcom needs to be able to think through all the implications of particular policy options and undertake without prejudice rigorous and candid assessments.</li> </ul>

**Reasons why public interest favours withholding information**

A consequence of disclosure would be that stakeholders would be less likely to come forward and discuss important policy issues, and be less open, with Ofcom. Ofcom would therefore be less able to gauge Stakeholders' views as to how effective its regulation is. Also to disclose internal correspondence would mean that Ofcom employees would be less likely to discuss policy issues openly and explore all possible regulatory options. These factors would in turn lessen Ofcom's ability to meet its statutory obligation to ensure its regulation is effective and appropriate. This would be against the public interest.

