

Reference: 550325

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Information Requests
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Freedom of Information: Right to know request

Thank you for your request for information where you asked about premium rate subscription services and data protection legislation.

This was received by Ofcom on 13 June and it has been considered under the Freedom of Information Act 2000 (the Act).

Your request formed a series of questions. I have numbered them for ease of reference below. Please find our response beneath each question.

1. *“A Premium Rate subscription service can be initiated by a phone user which sets up a recurring monthly subscription added to a phone bill. This can be done without the phone user providing a name or indeed their phone number. A third party can establish billing details through the Mobile Network Operator SIM card details. I would like to establish exactly what information the Mobile Network Operators provide to the third-party merchants to facilitate this transaction and if it complies with GDPR legislation. Any information held that you can provide to assist with my request would be greatly appreciated, I would be particularly interested in any in house legal advice etc. My limited understanding is that by browsing on a mobile phone, using mobile data a PRS merchant is able to determine a user’s mobile number without the explicit consent of the phone user”.*

We do not hold information (including any in-house legal advice) as to the information that Mobile Network Operators (MNOs) provide to third-party merchants in order to facilitate premium-rate services (PRS) and whether or not this complies with the GDPR.

MNOs and PRS providers are likely to have obligations under the GDPR and new Data Protection Act 2018 with regard to the way that they collect and use personal data. You may wish to contact your MNO or PRS provider directly as to their respective policies for complying with this legislation. The Information Commissioner’s Office (ICO) has the primary responsibility for enforcing the GDPR and Data Protection Act 2018. More information relating to GDPR compliance is available on the website of the ICO here: <https://ico.org.uk>

2. *“Secondly once a subscription has been initiated, a merchant cannot identify exactly who has entered into an agreement, as the merchant only has a mobile phone number. Can you please advise how a merchant can comply with GDPR legislation when faced with a complaint from someone claiming to be the phone account holder of that mobile phone number. I am concerned that personal data is not being handled in accordance with GDPR legislation. Since a third-party merchant cannot identify who has entered into an agreement, personal data (and for that matter a refund) could easily be handed over to someone claiming to be from that phone number. Could you please provide any information held that would assist in furthering my understanding on this issue? Has a review been carried out to ensure it is possible for premium rate subscription services to be GDPR compliant, if so please provide this review”.*

We do not hold information on this specific issue.

As set out above, however, you may wish to contact the MNOs and PRS providers directly as to their policies for complying with the GDPR and Data Protection Act 2018, and the ICO in terms of any advice or guidance they may be able to provide on the issue.

3. *“What safeguards or procedures do OFCOM/PSA have in place to ensure merchants utilising Premium Rate Subscription Services comply with GDPR legislation and protect consumers personal data?”.*

Please see the answers to questions 2 and 3 above.

In addition, we are aware that the Phone-paid Services Authority (as the UK regulator of PRS¹) sent a letter to every aggregator and provider of PRS in May 2018, reminding them of their obligations under the GDPR. The PSA has also published guidance in the form of an Industry Notice and Addendum which you can find here: <https://psauthority.org.uk/for-business/gdpr>

Further information regarding Ofcom’s and the PSA’s role in relation to PRS is set out on our website here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/premium-rate-services>

I hope this information is helpful. If you have any queries, then please contact information.requests@ofcom.org.uk. 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

¹ <https://psauthority.org.uk/>

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