

Reference: 1-317026455

15 April 2016

Julia Snape  
Information requests

[information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)

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

Thank you for your request for information dated 15 February which we have considered under the Freedom of Information Act 2000 ('the Act'). We wrote to you on the 11 March to extend the time period to assess the disclosure of information for public interest considerations. We have now considered all the factors.

You requested all information relating to communications from and to the UK Mobile Network Operators and from and to the UK Department for Culture, Media & Sport on the operation of GSM gateways in the UK.

I note you made a similar request on the 22 August 2008 to which we responded on 18 September 2008. We have therefore searched for information within scope of your request from 22 August 2008.

We hold relevant correspondence since 23 August 2008 which is provided in the attached file.

Please note that some information that falls within scope of your request falls under the exemption in Section 24 of the Act which relates to national security. In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information as set out in Annex A.

In addition some information falls within the exemption in Section 36 of the Act relating to information that would or would likely prejudice the effective conduct of public affairs which includes inhibiting the free and frank exchange of views. In applying this exemption we have also had to balance the public interest as set out in Annex B. In the letter in Annex C, Steve Gettings as a 'qualified person' confirms in his opinion it is not in the public interest for Ofcom to disclose the information to you.

Furthermore some names and contact details have been redacted based on Section 40 of the Act, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

Lastly, some information is being withheld as it falls under the exemption in Section 44 of the Act. Under this section information which we hold on this subject is exempt from disclosure since it was obtained in exercise of a statutory power and disclosure is prohibited under Section 393(1) of the Communications Act 2003. Section 44 is an absolute exemption under the Act and does not require a public interest test.

You should ensure that when using the provided information in any way, including publishing the information, you comply with all relevant legislation. For example, the information provided may be protected by copyright under the Copyright, Designs and Patents Act 1988 (as amended). If in doubt, please seek independent legal advice. For Ofcom's policy on copyright and related issues, please refer to our website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

If you have any further queries in relation to this letter, please feel free to contact me.

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 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:

Graham Howell  
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 24 – National Security**

**(1) Information is exempt information for the purpose of safeguarding national security.**

| <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 that the release of papers, correspondence, meeting minutes or notes and any other data exchanged between Ofcom and any part of the HM Government is exempt from disclosure as the exemption is required for the purpose of safeguarding national security.</li></ul> |
| <b>Reasons why public interest favours withholding information</b>   |   |
| <ul style="list-style-type: none"><li>• The inappropriate disclosure of this information would be likely to lead to the undermining of the capability, effectiveness, integrity and security of the relationship between Ofcom and the HM Government</li><li>• In so far as section 24(2) is engaged, the public interest favours neither confirming nor denying whether such information is or is not held. This is because in cases where HM government expresses a view about proposals such as this, it may take into account national security and law enforcement considerations. To confirm or deny whether this was the case in specific circumstances would cause damage by revealing areas where HM Government does or does not have security interests.</li></ul> |   |

## 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.

| Factors for disclosure  | Factors for withholding  |
|---|--|
| <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, including HM Government. 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 HM Government may be less likely to come forward and discuss important policy issues, and be less open, with Ofcom. 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.

**Annex C**

**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.

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



Signed ....

Date.....14 April 2016.....

Steve Gettings  
Secretary to the Corporation  
Ofcom