



Information Requests  
Secretariat

Reference: 00359662

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

9 December 2016

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

Thank you for your request for information regarding Ofcom's investigation of a complaint received on 11 November 2016.

You asked:

*"Please provide the following information:*

*1. Details of the investigation Ofcom undertook in relation to the complaint. Please list the enquiries made by Ofcom and the evidence Ofcom relied upon. Please include details of:*

*a. Ofcom's assessment of the target of the investigation's compliance with its licence conditions in relation to transmission on trans-channel frequencies;*

*b. whether Ofcom relied on any assurances from the target that it was in compliance with its licence conditions and, if so, the extent to which Ofcom relied on those assurances; and*

*c. whether Ofcom gathered its own independent evidence to support its reasoning and, if so, what that evidence was.*

*2. The outcome of the complaint investigation. Please include the Ofcom decision document or documents containing the reasons, staff recommendation and written outcome of the investigation. For the avoidance of doubt please include Ofcom's assessments of each issue outlined in the complaint.*

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3. *Details of Ofcom's decision process to conclude the investigation into the complaint the way it did. Please include the identity of the decision maker (either by name or role) at Ofcom responsible for the final decision.*"

We have considered your request under the terms of both the Freedom of Information Act 2000 (the FOI Act) and the Environmental Information Regulations (EIR).

We have also had regard to relevant Information Commissioner's guidance.

Having considered all the relevant legislation and guidance, we consider the information you have requested falls within the definition of 'environmental information' (as defined under Regulation 2 (1) of the EIRs – specifically, information falling under Regulation 2 (1) (b) of those Regulations which includes information on factors such as 'emissions'.

#### Ofcom's Investigations Procedure

In responding to your request, I would first like to explain the procedure Ofcom follows when conducting an investigation following a complaint(s) about spectrum use.

Once a decision has been made to open a case, an investigation is undertaken by our spectrum engineering team. The purpose of the investigation is to assess whether the activities complained about are activities which are authorised under relevant licences or not, and if they are, whether they comply in all material respects with the relevant licence conditions.

We gather our own independent evidence to support any decision we reach. This involves Ofcom's Spectrum Engineering Officers inspecting the relevant sites, measuring any relevant transmissions and identifying which bands are being used.

When checking the licensing position, we take account of both any UK licence(s) that have been issued (these are published on Ofcom's website at <http://spectruminfo.ofcom.org.uk/spectrumInfo/licences>, and also any relevant licences granted (but not necessarily published) in other jurisdictions.

In making our assessment, we look at all the accurate and relevant information that is available to us, which may or may not be in the public domain.

The decision maker is a senior person within our Spectrum Management team – normally the Regional Engineering Manager. He or she makes a decision about whether and what action Ofcom should take, having regard to the evidence, any relevant Ofcom powers, duties and discretion and our administrative priorities.

Details of the complaint and the investigation are held on our records for our own internal use, so that we hold a record of actions taken and the reasons for our decisions.

I can confirm that this procedure was followed in this particular case.

### Disclosure under the EIRs

In relation to requests for disclosure of environmental information, we are mindful of the presumption in favour of disclosure under Regulation 12 (2) of the EIRs. Having considered the information requested and the information we hold, and taking account of our obligations under the EIRs and the particular circumstances of this case, we are disclosing to you the following documents relating to this investigation (see attachments to this letter).

These documents comprise the information we hold relating to the investigation that falls within your request, and is subject only to any redacted information which falls within one or more of the permitted exceptions under the EIRs:

1. Case Record of the investigation: please note that some names and contact details included in this documentation have been redacted since they relate to personal information which falls under the exception for personal data in Regulation 13 (1) of the EIRs;
2. Internal manuscript notes made in the course of the investigation together with a typed transcript of those notes: please note that some material has been redacted as it falls outside the scope of your request (it relates to other matters not related to this case); and any personal data included in these notes has also been redacted for the reason given in 1 above;
3. Ofcom's Assessment Report: setting out the results of our investigation and the decisions we reached.

We can confirm that Ofcom did not rely in this case, on any assurances from the target of the investigation as to whether it was in compliance with its licence conditions. Ofcom made its own assessment.

With regard to the contents of our Assessment Report at 3 above, please note:

- a) as noted above, relevant UK licences referred to in the Report can be found on Ofcom's website;
- b) page 7: refers to an apparent non conformity issue concerning the size of the microwave dish. However, we have found no evidence that this dish is being used by the target of the investigation (or anyone else) for any unlicensed transmissions. Where there is no evidence of harm or of any offence being committed, we consider, in accordance with our duties, that it is not reasonable or proportionate for us to investigate this further at this time. Were we to find evidence that the dish was being used for unlicensed transmissions, Ofcom would most likely investigate this further, where the proportionate outcome might be to issue a warning letter to the person concerned;
- c) page 9: refers to an emission seen by the Spectrum Engineering Officer from the Dunkirk site on 6.641GHz at an approximate bearing of 137 degrees which '...cannot currently be explained by licences either live or archived and could warrant further investigation'.

This final matter is currently under investigation. As such, the information relating to it falls within the exception in Regulation 12(5)(b), where 'its disclosure would adversely

affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature'. In applying this exception, we have considered whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information, and concluded that it does, as set out in Annex A.

In case it is of assistance, I also enclose a timeline of our investigation. Although this was created after receiving your request – so therefore falls outside it - we think it may assist you.

I also set out below the meanings of certain abbreviations used in the disclosed information in case this is helpful:

SEO – Spectrum Engineering Officer

DEO – Duty Engineering Officer

REM – Regional Engineer Management

REM SE – Regional Engineer Management South East

SMC – Spectrum Management Centre

SAF Kit – this kit is a 2 to 40 GHz Handheld Spectrum Analyser, Horn Antenna, Tripod and Telescopic Gun Sight.

You should ensure that when using the disclosed information in any way, including publishing it, 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). For Ofcom's policy on copyright and related issues, please refer to our website at <http://www.ofcom.org.uk/about/account/disclaimer/>

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

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

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