

Reference: 02023862

Information Requests
information.requests@ofcom.org.uk

18 July 2025

Freedom of Information request: Right to know request

Thank you for your request for information about complaints, enforcement actions and data sharing agreements regarding SMARTY.

We received this request on 20 June 2025 and we have considered your request under the Freedom of Information Act 2000 ("the FOI Act").

Your request & our response

The following records from 2023 to 2025 related to SMARTY (Hutchison 3G UK Ltd):

- 1. All complaints received concerning SIM delivery failures, customer service accessibility, and treatment of disabled or vulnerable customers.*

We can neither confirm nor deny whether we hold this information. By virtue of section 44(2) of the FOI Act, the duty to confirm or deny holding information does not arise if the confirmation or denial that would be given in itself reveals information that falls under the exemption in section 44(1) of the FOI Act.

Section 44(1) of the FOI Act provides that information is exempt from disclosure if its disclosure is prohibited by or under any enactment. The enactment that prohibits the disclosure of this information is section 393(1) of the Communications Act 2003 ("the Communications Act"). Under this section, we are prohibited from disclosing information with respect to a particular business (in this case, SMARTY) that has been obtained in the exercise of our regulatory functions, unless that business consents or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which apply here. Section 44 of the FOI Act is an absolute exemption and therefore is not subject to the public interest test.

- 2. Records of any enforcement actions, investigations, or regulatory guidance issued to SMARTY during this period.*

Generally, information regarding formal investigations and enforcement actions are published in the [Enforcement bulletin](#) on our website. To-date we have not conducted any formal enforcement action against SMARTY.

We are unable to confirm whether we hold or do not hold any further records about enforcement/investigations/guidance issued to SMARTY, or disclose any information if we did hold it. This is because, we consider that disclosure of such confirmation or information (beyond what is published on our website) is exempt from disclosure under section 43 of the FOI Act,

which exempts the disclosure of information where its disclosure would, or would be likely to, prejudice the commercial interests of any person or company (including SMARTY).

Please note under section 43(3) of the FOI Act, the duty to confirm or deny holding information does not arise if the confirmation or denial that would be given in itself reveals information that falls under the exemption in section 43 of the FOI Act. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. The Annex included in this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

We also consider that further exemptions may be applicable here, such as section 36 of the FOI Act.

3. *Details of any data-sharing agreements between SMARTY and third parties relevant to telecom services.*

You may wish to contact SMARTY directly about this as this is not something we have.

If you have any further queries, then please send them to information.requests@ofcom.org.uk – quoting the reference number above in any future communications.

Yours sincerely,

Information Requests

Request an internal review

If you are unhappy with the response you have received to your request for information, or think that your request was refused without a reason valid under the law, you may ask for an internal review. If you do, it will be subject to an independent review within Ofcom. We will either uphold the original decision, or reverse or modify it.

If you would like to ask us to carry out an internal review, you should get in touch within two months of the date of this letter. There is no statutory deadline for us to complete our internal review, and the time it takes will depend on the complexity of the request. But we will try to complete the review within 20 working days (or no more than 40 working days in exceptional cases) and keep you informed of our progress. Please email the Information Requests team (information.requests@ofcom.org.uk) to request an internal review.

Taking it further

If you are unhappy with the outcome of our internal review, then you have the right to [complain to the Information Commissioner's Office](#).

Annex A

Section 43(2) of the FOI Act provides that:

Information is exempt if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Enabling the public to gain a better understanding of our regulatory work, especially in relation to enforcement, and thereby increasing the public confidence in Ofcom’s work. • Generally, there is a public interest in transparency of regulatory activities. 	<ul style="list-style-type: none"> • The disclosure of any further records on enforcement, investigations or guidance (including confirmation of whether we hold such records or not) may affect SMARTY’S reputation and the consumer’s perception of them - this would, or would likely, affect the commercial interests of SMARTY or its Competitors (depending on whether the disclosure positively or negatively affects SMARTY). Whenever Ofcom releases any information on its enforcement work, it would normally have gone through the proper enforcement governance/sign off for such a release of information, which would consider amongst other things what is warranted in the circumstances,¹ and such due process would not have happened here. • The disclosure of the information (including whether it is held or not) may allow competitors to see information which is generally not known to them and, depending on whether that information negatively or positively affects SMARTY’S reputation or consumer perception, may lead to a competitive advantage for SMARTY or its Competitors. • Disclosure of whether we hold such internal records, and disclosure of such information if held, may cause confusion or misinformation among the public which may affect SMARTY or its competitors.

We also generally follow Ofcom’s [enforcement guidelines](#) which sets out how we normally carry out our enforcement work, including how and when we would open investigations, and when we publish this. We publish any decisions we make to open investigations on our [website](#).

Reasons why public interest favours withholding information	
We publish any decisions we make to open investigations on our website and set out how we normally carry out our regulatory enforcement in these enforcement guidelines . We consider that, in these circumstances, the potential prejudice to commercial interests outweighs the public interest in disclosing the information (including disclosing whether or not we hold information in scope of the request).	