

BERR Ref: 01.04.05/5415c

Your Ref:

Steve Hankin

[<mailto:request-10391-6e0df1de@whatdotheyknow.com>]

27 April 2009

Dear Mr Hankin

Freedom of Information request 09/0530

Thank you for your e-mail request for information of 15 April 2009. You asked for the following information to be released:

I wonder if you are able to release that most recent communication where the UK has apparently been threatened with EU court action over its failure to implement the ePrivacy Directive fully.

Previous letters from the European Commission in connection with the trials of Deep Packet Inspection systems from Phorm or 121Media have been withheld due to 'Negotiations' and I wonder, if negotiations are now concluded, can the letters be released?

The general public has interest in seeing all the previous communications from the EU on this matter, in addition to the most recent letter, notifying us of proceedings against the UK where we are being sued for inaction following the Phorm Webwise trials by BT Retail.

I hope you will consider releasing the most recent letter and the previous communications also.

The information contained in the letter is being withheld as it is exempt by application of section 27 of the Freedom of Information Act 2000.

Section 27 (1) (b) exempts information if its disclosure would, or would be likely to prejudice, relations between the United Kingdom and any international organisation including the European Commission.

This is a qualified exemption and in order to consider your request, I am required to consider and balance the public interest in withholding the information against that in disclosing it.

There is a clear public interest in transparency in the workings of government and in awareness of the European Commission's powers to intervene on behalf of consumers and its willingness to use those powers. However it is also important that the Commission and member states should be able to raise issues with one another initially in confidence.

The prejudice that would be caused to relations between United Kingdom and the European Commission is a material factor, as is the important part that this information plays in free and frank discussion, which would be likely to be inhibited by disclosure. If this correspondence were less candid in the future, its value would be reduced.

Furthermore, it is important to take account of the context in which this correspondence arises. The process by which the European Commission corresponds with its member states is a bilateral iterative process in which the European Commission is able to express any concern it has about the implementation of European law in the State, and the Member State is able to set out, in an equally free and frank manner, its views on the points raised by the Commission.

The issues that are raised at the beginning of this process can often be quite different from those issues (if any) which may eventually be the subject of formal proceedings.

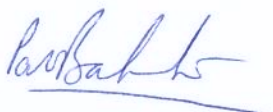
We have, therefore, concluded that the public interest in maintaining the exemptions outweigh the public interest in disclosing the information.

Appeals procedure

If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this letter. If you wish to request an internal review please contact me in writing, quoting the above reference number .

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.

Yours sincerely



Patrick Balchin
Business relations 2