

BIS Ref:
Your Ref:

Mr Peter John
14 Cavendish Close
Saltford
BS31 3LH

10 July 2009

Dear Mr John

Freedom of Information request 09/0807

Thank you for your request for information to be disclosed to you under the Freedom of Information Act 2000.

Your query contained five separate elements and I shall reply to them each in turn.

On 14 April 2009, the UK were given two months to respond to infringement proceedings initiated by the European Commission (64/08/INSO). The proceedings arise following the covert trials of Phorm/121Media interception and surveillance systems by BT Internet on hundreds of thousands of its customers, and the web sites they used. The last working day for the UK Government to submit a response was Friday 12 June 2009.

Please will you - confirm or deny that a response has been submitted -

I can confirm that a response was sent to the European Commission on 15 June 2009.

indicate which Department of Government was responsible for submitting the response -

The Home Office was responsible for submitting the response.

disclose the content of that response in full -

The information contained in the letter is being withheld as it is exempt by application of section 27 and section 35 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.

Section 35 (1) of the Freedom of Information Act provides that information held by a government department or by the National Assembly for Wales is exempt information if it relates to the formulation or development of government policy,

These are 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.

disclose the content of correspondence between BERR and the European Commission concerning the same matter

Following a search for this information of the paper and electronic records, I have not found any information held between BERR and the European Commission concerning this

matter. For the purposes of the search the "matter" was taken to be the first stage of the infringement proceedings.

disclose correspondence between the BERR and other UK government departments contributing to the response concerning the same matter.

Again, for the purposes of this element, the "matter" was taken to be the first stage of the infringement proceedings.

I have identified some records that are within the scope of your request. However, the information is being withheld as it is exempt by application of section 27 and section 35 of the Freedom of Information Act 2000.

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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