

Catriona Lawrence
Internal Reviewer

FOI Ref: 01109775
Internal Review ref: 01220508

Email:
Information.requests@ofcom.org.uk

Giuseppe Sollazzo
request-722787-4eae0e6d@whatdotheyknow.com

30 April 2021

Dear Mr Sollazzo,

Internal Review: Broadband Checker Data

Thank you for your email dated 18 March 2021, where you asked for an internal review of Ofcom's response to your Freedom of Information Act ('the FoIA') request (ref: 01109775) dated 1 March 2021. Further to my email of 19 April, I have now completed the internal review of Ofcom's original decision to withhold disclosure of the address-level data in bulk that you requested on 1 February 2021.

To be clear from the outset, I confirm that I have upheld the original decision on the basis that the requested information is exempt information by virtue of section 44 of the FoIA. That exemption is an absolute one, which means that we do not have to assess the balance of the public interest for and against disclosure. We can therefore automatically withhold disclosure of that information.

Your original FOI request

Your original request, dated 1 February 2021, contained four questions regarding [Ofcom's Broadband Checker](#)¹. While the Information Requests Team ('the Team') was able to provide information in response to questions 1-3, it withheld the information requested in question 4, which stated:

I would like to request ... access to the address-level data (not the aggregate data you provide on the website) in bulk, by whatever means you suggest (a file download, an API, etc)

The Team informed you that it was unable to provide the address-level data in bulk, as requested in question 4, as it considered this information was prohibited from disclosure under section 393(1) of the Communications Act 2003 ('the CA'), by way of section 44 of the FoIA.

It advised that we do have an API that allows access to Connected Nations address-level broadband and mobile data (available per address, not in bulk), subject to certain restrictions on the extent to which data can be accessed and the purpose(s) of use. It explained that users must sign up on our API portal to access the fixed broadband and mobile data and must accept the associated terms and conditions of use on application. Finally, it noted that much of the information which underpins our

¹ <https://checker.ofcom.org.uk/broadbandcoverage>

Connected Nations infrastructure reports available to download on our website, including fixed broadband coverage by postcode.

Internal review

Your e-mail of 18 March you argue that:

Section 393 is meant to protect data that is not already available to the public, which is what a "disclosure" would do. In this case the data is already available, despite not in bulk. My request is not about new data being made publicly available, the data is already available in full, albeit one record at a time. My question is about re-release exactly the same data in a more comprehensive form, and therefore this request does not constitute a "disclosure". As such, section 393(1) of the Communications Act 2003 cannot apply.

I disagree with your interpretation of section 393 of the CA. The address-level data in bulk you have requested is information that we have not made available to the public. Making such data publicly available would, in my opinion, amount to a disclosure of information for the purposes of section 393 of the CA.

In that regard, I note that section 393(1) prohibits us from disclosing the address-level data in bulk unless we first obtain the consent to do so from each of the communications providers in relation to whom that data relates. They have not given us their consent to do so. Section 393(10) makes it an offence for us to disclose that information in contravention of the general prohibition in section 393(1).

Section 393 provides for a limited number of exemptions from that prohibition, if our disclosure would satisfy certain criteria. In our original decision, the Team referred to those exemptions as 'statutory gateways'. The only gateway potentially relevant in this context is where disclosure of information is made for the purpose of facilitating the carrying out by Ofcom of any of its functions (see section 393(2)(a)). In that regard, the Information Commissioner has already accepted that the FoIA is a duty imposed upon public authorities, but it is not a function for the purpose of the gateway in section 393(2)(a) and disclosure of information relating to businesses without their consent would also not facilitate our functions as a regulator.

The more limited information available via our Broadband Checker and our API (mentioned by the Team in the original decision) has been limited to what is necessary to discharge specific functions to provide information for consumers and, in relation to the API, to some other users whom must accept associated terms and conditions of use for the API.

In discharging those functions under the CA, we must consider excluding from our publications any information that relates to confidential matters and information that we could refuse to disclose in response to a request under the FoIA. Communications providers from whom we have obtained the data have refused to give their consent to any disclosure of their address-level data in bulk on confidentiality/commercial interest grounds, other than for the more limited information available via our Broadband Checker and our controlled disclosure through the API. Indeed, our API's terms

and conditions make clear that users are not permitted to cache, aggregate or otherwise store the information in order to build a partial or full dataset.

I also note that ICO's own guidance makes it clear that information will not be in the public domain if it would require unrealistic persistence or specialised knowledge to find it, even if it is theoretically available somewhere in a library or on the internet².

Accordingly, I agree that we are prohibited under section 393 of the CA to provide the address-level data in bulk you have requested and that the absolute exemption in section 44 of the FoIA applies to your request.

If you have any queries, then please contact information.requests@ofcom.org.uk. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Catriona Lawrence

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

Your complaint should be raised within three months of your internal review.

² Paragraph 19, <https://ico.org.uk/media/1204/information-in-the-public-domain-foi-eir-guidance.pdf>