

Reference: 904370

Wayne Logan  
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Jerin John  
Information Rights Adviser  
[Information.requests@ofcom.org.uk](mailto:Information.requests@ofcom.org.uk)

14 May 2020

Dear Mr Logan,

### Freedom of Information: Right to know request

Thank you for your request for information in relation to Fusion 87.5 FM Birmingham.

We received this request on 17 April and have considered it under the Freedom of Information Act 2000 ("the Act").

### Your request

You asked:

*On the afternoon of Friday 17th April 2020, OFCOM made an enforcement visit to the transmitter site of Fusion FM, near Birmingham - broadcasting on 87.5Mhz.*

*Where was the transmitter located?*

*What equipment was removed?*

*Was this as a result of monitoring, a complaint (if so who?) or interference to another service (if so, what?) Were any individuals detained or identified?*

### Our response

By way of background, Ofcom is the statutory regulator for communications. That includes regulating the use of the electromagnetic spectrum – the airwaves that are used for wireless communications such as mobile telephones, as well as television and radio.

Section 3 of the Communications Act 2003 sets out Ofcom's general duties which include a requirement to secure, in the carrying out of our functions, the optimal use for wireless telegraphy of the electromagnetic spectrum. It also states that in doing so, we must have regard to the different needs and interests of all those who may wish to make use of it

Illegal radio broadcast stations, also known as pirate radio, may cause interference to spectrum and have the potential to disrupt the communications of critical services like air traffic control. Further information about pirate radio and our remit in this area is available on our website here:

<https://www.ofcom.org.uk/spectrum/interference-enforcement/spectrum-offences/illegalbroadcast>.

In fulfilling our functions and duties with regards to spectrum we may from time to time carry out monitoring activities.

Turning to your request, we can neither confirm nor deny whether we hold the information you requested, as to provide such information would fall under the exemption in section 44 of the Act. Section 44 inhibits disclosure of information if another enactment prohibits it, in this case section 393(1) of the Communications Act 2003. Under this section, information which relates to a business is exempt from disclosure. Section 44 is an absolute exemption under the Act and does not require a public interest test.<sup>1</sup>

I hope this information is helpful. If you have any further queries, then please send them to [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk) quoting the reference number above in any future communications.

Yours sincerely,

Jerin John

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<sup>1</sup> Other exemptions, for example section 31 of the Act, may apply.

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:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

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