

BERR Ref: 01.04.05/4982c

Your Ref:

Paul Hancocks

[<mailto:request-8471-f91ce389@whatdotheyknow.com>]

2 March 2009

Dear Mr Hancocks

**Freedom of Information request - Letter from Telecoms European Commissioner
Viviane Reding's Office**

Please release the third letter received from the above EC office, relating to questions about the interception of private communication by BT plc (Phorm BT Webwise trials 2006 & 2007, and possibly also relating to the subsequent trials of the system in 2008 by BT where they attempted to obtain consumer consent legally)

I refer to the letter discussed in the story published online here:

http://www.theregister.co.uk/2009/02/11/phorm_eu_action_threat/

I note that requests for previous correspondence from the EU, or in reply to them on this issue, have been denied.

Thank you for your request for information, above, made under the Freedom of Information Act 2000. This request was received on 27 February 2009. I can confirm that the Department does hold the information you have requested.

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 is a qualified exemption. This means that even if the information requested is exempt, the public authority must decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.

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. This would include, for example, the European Commission.

In relation to the balance of the public interest, 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 the free and frank process of policy formulation, which would be likely to be inhibited by disclosure. It is also very much in the public interest that the UK Government can take account of the views of the European Commission in its continuing policy discussions and that this is not inhibited by premature disclosure of these views. If this correspondence were less candid in the future, its value would be reduced and the policy formulation process would be less informed.

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 are eventually the subsequent negotiations.

It is important to the UK to have maximum flexibility in such negotiations with the Commission as might take place, and for them to be conducted in the public domain would likely be prejudicial to both the United Kingdom's position and extent to which the European Commission is able to investigate and ascertain whether any further proceedings are in fact necessary, which is ultimately in the interest of ensuring that EU law is properly implemented.

Balanced against this, however, is that putting what are effectively, only partial views on the part of the Commission, into the public domain could lead to unwarranted and unnecessary confusion. Such confusion could lead to eventually to the United Kingdom's domestic legislation being unnecessarily challenged.

We have, therefore, concluded that the public interest in maintaining the exemptions outweighs 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, 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

A handwritten signature in blue ink, appearing to read 'Patrick Balchin', written over a horizontal line.

Patrick Balchin
Business relations 2

