

request-25166-62019ade@whatdotheyknow.com
(by e-mail only)

27 January, 2010

Dear Mr John,

**FOI 271911 – Phorm/ Second Phase of European Commission
Infringement Case 64/08/INSO**

I refer to your Freedom of Information request which you made on 29 December 2009. A copy of your request appears below.

"Dear Cabinet Office,

"Concerning the second phase of the European Commission Infringement case 64/08/INSO, arising from the covert mass surveillance/industrial espionage trials by BT/Phorm in 2006, 2007 and 2008... Please could you disclose for me,

- the date on which the response to the second stage of infringement proceedings was submitted to the EC (the deadline being 29 December 2009)
- the department that lead the preparation of that response
- the full response that was submitted to the EC

- any correspondence between the Cabinet Office/Prime Minister's Office and the EC concerning the case since 1 October 2009
- the dates/agenda/minutes of meetings between the Cabinet Office/Prime Minister's Office and the EC to discuss the case since 1 October 2009

- any correspondence between Cabinet Office, and Home Office/BERR/BIS/MoJ/Foreign Office concerning the case since 1 October 2009
- the dates/agenda/minutes of meetings between the Cabinet Office and Home Office/BERR/BIS/MoJ/Foreign Office concerning the case since 1 October 2009

- a report of all records concerning 64/08/INSO from the case management system which is being used by the Cabinet Office to track this case

"ICO Fol guidance states "There will often be a private interest in withholding information which would reveal incompetence on the part of or corruption within the public authority or which would simply cause embarrassment to the authority. However, the public interest will favour accountability and good administration and it is this interest that must be weighed against the public interest in not disclosing the information".

"In the interest of public accountability and good administration, I would also be grateful if you would now disclose to me the two



earlier responses to the EC concerning the same matter, on or about 15 September 2008, and the second on or about 13 June 2009, which were rejected by the European Commission. I believe you are withholding information in those responses which would reveal incompetence, corruption, or embarrassment (grounds which are specifically excluded by ICO Fol guidance)."

Under section 14(1) of the Freedom of Information Act a public authority is not obliged to comply with a request for information if the request is vexatious. The Information Commissioner has issued guidance on vexatious requests. This states that a request may be vexatious if it can fairly be seen as obsessive; if it harrasses the authority or causes distress to staff; if complying with the request would impose a significant burden on the public authority in terms of expense or distraction; if it is designed to cause disruption or annoyance; or if it lacks any serious purpose or value.

I have discussed your request with others in the Cabinet Office and I regret to inform you that we consider it to be vexatious.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Sue Gray
Director
Cabinet Office
70 Whitehall
London
SW1A 2AS

email: foiteam@cabinet-office.x.gsi.gov.uk

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Rachel Clark