

Reference: 1-164193798

Date: 07 January 2011

By email:
request-55376-305bd4b6@whatdotheyknow.com

RICHARD NEUDEGG
Information Requests

information.requests@ofcom.org.uk

Dear Mr Petters

Freedom of Information: Right to know request

Thank you for your request for information. You asked:

Please supply full and complete details and documentation of the following (redacted as required by Data Protection Act. Where redaction is appropriate please state the reason in each and every case).

- 1. All details Ofcom have of complaints reported through the BBC, linked with PLT interference.*
- 2. Full details of any information Ofcom has received or enquiries that have been made by it regarding the proposed use of the frequency range 2 MHz to 1000 MHz by PLT.*
- 3. Full details of reports and evidence supplied to Ofcom by third parties, which indicate non-compliance of PLT with the Harmonized Standards or the essential requirements of the EMC Regulations (2006).*
- 4. Details of actions taken by Ofcom regarding the PA Consulting PLT report-21 June 2010, with copies of all records relating to that report. Please include the date the report was originally received by Ofcom from PA Consulting and detail any corrections, amendments or omissions which were undertaken by Ofcom or its contractor, between the date the report was first received by Ofcom and the date the report was published to the general public.*
- 5. Copies of all notes and minutes or other documentation relating to Ofcom's meetings and discussions with spectrum Stakeholders which relate to PLT. This includes the Stakeholder meeting held on 3 August 2010 at Riverside House.*
- 6. Details of all research on PLT interference or its effects, including the effects to VHF FM broadcast and DAB broadcasting, excluding the PA Consulting report.*
- 7. Full details of reports and evidence supplied to Ofcom by third parties, which indicate non-compliance of PLT with the Harmonized Standards or the essential requirements of the EMC Regulations (2006).*
- 8. Supply the following:-*

a. Details of any enforcement action taken in respect of PLT stating the frequency of those actions and their outcome.

b. Details of all requests from other government agencies or any corporations who have approached Ofcom in any capacity or way relating to PLT, stating whether lobbying has taken place in each case.

c. Copies of all decisions, papers and records of meetings relating to Ofcom's reasons for not acting on the PA Consulting report, 21 June 2010, with dates of such events.

d. Copies of all Ofcom's and its advisers' tests on the effects of PLAs on domestic, military or civil use of the common frequencies. If no tests or evidence has been conducted or gathered, state why testing was not deemed appropriate.

e. A copy of the report from Somerset Trading Standards relating to the Belkin Gigabit Powerline HD adapters (F5D4076) sent to Ofcom in May 2010 with all replies and follow up details and documentation or other responses.

Please note that where requests reference documentation, responses should include all e-mail exchanges and telephone conversation notes.

Ofcom received your request on 16 December 2010 and has considered it under the Freedom of Information Act 2000 (the Act). Please see our response to each of your questions in turn below.

1. All details Ofcom have of complaints reported through the BBC, linked with PLT interference.

We have received no complaints reported through the BBC linked with PLT.

2. Full details of any information Ofcom has received or enquiries that have been made by it regarding the proposed use of the frequency range 2 MHz to 1000 MHz by PLT.

We do not hold any information in relation to this.

3. Full details of reports and evidence supplied to Ofcom by third parties, which indicate non-compliance of PLT with the Harmonized Standards or the essential requirements of the EMC Regulations (2006).

Occasionally we are contacted by third parties, particularly amateur radio users, referring us to information on PLT which is already in the public domain and which was not produced or commissioned by Ofcom.

However, other than for our criminal investigations into EMC compliance, we have not received nor commissioned any formal reports in connection with PLT other than the PA Consulting report. We understand your question to refer to reports commissioned by Ofcom in this way. We wish to be clear that there are none other than the PA Consulting report.

However, if your question was wider than this and you do wish us to consider all correspondence we have received from amateur radio users, please get in touch again and we will review the request from that perspective.

To the extent that your question relates to information and reports in connection with Ofcom's criminal enforcement functions under the EMC regime, the public information that we hold on this can be found at:

<http://stakeholders.ofcom.org.uk/enforcement/spectrum-enforcement/plt/>

This explains the outcome of our investigation. You will note that, on the evidence, Ofcom has not so far found there is a breach of the EMC essential requirements.

You may also find the following response to an EU PMQ in September on PLT issues of interest:

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-3813&language=EN>

And the Government's response to an E-petition about testing PLT equipment:

<http://www.number10.gov.uk/Page21654>

We are unable to provide you with any further information. Whilst Ofcom does hold information in relation to our investigations, we consider that the exemption under section 30 of the Act, which relates to investigations and proceedings conducted by public authorities

In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information. The attached Annex A to this letter sets out the exemption in full, as well as the factors that Ofcom considered when deciding where the public interest lay.

In addition to section 30, the information could also be withheld under section 36 of the Act. This relates to information that would or would likely prejudice the effective conduct of public affairs, which includes inhibiting the free and frank exchange of views. In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information as set out in Annex B. In the letter in Annex C, Graham Howell as a "qualified person" confirms that in his reasonable opinion it is not in the public interest for Ofcom to disclose the information you requested.

Furthermore, the information could also be withheld under section 42(1) of the Act. This part of the Act deals with the exemption of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information. The attached Annex D to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

4. Details of actions taken by Ofcom regarding the PA Consulting PLT report-21 June 2010, with copies of all records relating to that report. Please include the date the report was originally received by Ofcom from PA Consulting and detail any corrections, amendments or omissions which were undertaken by Ofcom or its contractor, between the date the report was first received by Ofcom and the date the report was published to the general public.

The PA Consulting PLT report you refer to was originally received by Ofcom on 13 November 2009. We decided to extend the project to include an analysis of the interference effects of the emerging devices operating at frequencies above 30MHz. This effectively extended the project until April 2010; we received the final version of the report on 21 April 2010, which was published on the 21 June 2010.

The publication of the report was delayed due to our desire to thoroughly review the document, the publication embargo around the election and then getting time on the agenda's of internal policy committees.

A draft of the report was reviewed so there have been some comments and requests for modification or clarification or text within the report. None of the comments, however, either challenged or requested a change to the findings of the study.

With regard to copies of all records relating to that report, please see the following attachments;

- Attachment 1 – the original draft report received November 2009 before the project was extended
- Attachments 2-5 – weekly progress reports from PA Consulting sent to Ofcom
- Attachments 5-9 – meeting packs and minutes of meetings between PA Consulting and Ofcom
- Attachment 10 – a discussion note from PA Consulting sent to Ofcom regarding potential victim systems for the second phase of the study.

Please note that some names have been redacted based on section 40 of the Freedom of Information Act 2000, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

5. Copies of all notes and minutes or other documentation relating to Ofcom's meetings and discussions with spectrum Stakeholders which relate to PLT. This includes the Stakeholder meeting held on 3 August 2010 at Riverside House.

In relation to the Stakeholder meeting held on 3 August 2010 which you refer to, please see attachments 11-13 which contains all notes and minutes that we hold for that meeting.

Please note that some names have been redacted based on section 40 of the Freedom of Information Act 2000, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

We have had meetings with the BBC, BIS, RSGB and UKQRM relating to PLT. We have also attended meetings where the MOD, CAA, Police Authority and DCLG have been present. While we do not hold minutes for these meetings, it is possible there is some email correspondence or associated documents relating to these meetings. However, the information is not readily accessible and a considerable amount of time would be needed to locate, retrieve, identify and extract any relevant information.

Section 12 of the Freedom of Information Act 2000 provides that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit”. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, and is, for Ofcom, £450. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, identifying, locating, retrieving and extracting the information from any document containing it. The Regulations provide that costs are to be estimated at a rate of £25 per person per hour.

We estimate that it would take at least 18 hours to identify, locate and extract the information you require and as such the cost of complying with your request will exceed the appropriate limit. If the data exists it is not readily to hand and it would therefore be necessary to search electronic and papers records made or kept over a considerable period of time by a number Ofcom colleagues. We will therefore not be able to provide any further information in connection to this question.

However, if you wish to submit an alternative request with a narrower, more specific scope in relation to one of the organisations which we have listed above, we would be happy to give it our full consideration.

6. Details of all research on PLT interference or its effects, including the effects to VHF FM broadcast and DAB broadcasting, excluding the PA Consulting report.

We do not hold any further research beyond the PA Consulting report discussed in our answer to question 4.

7. Full details of reports and evidence supplied to Ofcom by third parties, which indicate non-compliance of PLT with the Harmonized Standards or the essential requirements of the EMC Regulations (2006).

Please refer to our response to question 3.

8a. Details of any enforcement action taken in respect of PLT stating the frequency of those actions and their outcome.

Please refer to the statement on our website:

<http://stakeholders.ofcom.org.uk/enforcement/spectrum-enforcement/plt/>

8b. Details of all requests from other government agencies or any corporations who have approached Ofcom in any capacity or way relating to PLT, stating whether lobbying has taken place in each case.

Please refer to our response to question 5.

8c. Copies of all decisions, papers and records of meetings relating to Ofcom's reasons for not acting on the PA Consulting report, 21 June 2010, with dates of such events.

In addition to publication on our website, the only action we took directly relating to the report was to send a letter to The British Standards Institution. A copy of this is provided in attachment 14. Please note that some details have been redacted based on section 40 of the Freedom of Information Act 2000, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

The PA Consulting report was commissioned as forward looking research and as such was not a document that required "acting on" by Ofcom in relation to current enforcement policy; therefore we do not hold any further information in relation to this question.

8d. Copies of all Ofcom's and its advisers' tests on the effects of PLAs on domestic, military or civil use of the common frequencies. If no tests or evidence has been conducted or gathered, state why testing was not deemed appropriate.

We do not hold this information as we have not carried out any such tests.

8e. A copy of the report from Somerset Trading Standards relating to the Belkin Gigabit Powerline HD adapters (F5D4076) sent to Ofcom in May 2010 with all replies and follow up details and documentation or other responses.

We are not aware of this report and therefore do not hold this information.

Please ensure that when using the provided information in any way, you comply with all relevant legislation. For example, the information provided may be protected by copyright under the Copyright, Designs and Patents Act 1988 (as amended). If in doubt, please seek independent legal advice. For Ofcom's policy on copyright and related issues, please refer to <http://www.ofcom.org.uk/disclaimer>.

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



Richard Neudegg

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:

Graham Howell
The Secretary to the Corporation
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

Annex A

Section 30: Investigations And Proceedings Conducted By Public Authorities

Section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct. In summary, there are two ways in which the application of section 30 may be triggered:

- a. where information has at any time been held for the purpose of specified criminal and other investigations or proceedings; and
- b. where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings.

Section 30 is subject to a public interest balance.

Summary factors for application of the exemption

- Ofcom holds information, including correspondence, data and legal advice, collected for the purpose of a criminal investigation it conducted in relation to alleged breaches of the EMC regulations.
- Therefore, the exemption in section 30 (1) applies.

Summary reasons why public interest favours withholding information

- While Ofcom understands that the disclosure of the information may provide greater public confidence in its regulated activities, Ofcom considers that the public interest in this case favours non-disclosure.
- Disclosure of such information would be likely to deter people providing such information relevant to an investigation in the future and therefore inhibit the conduct of such criminal investigations by Ofcom.
- Disclosure of the information would be likely to inform those supplying such equipment of the approach and general considerations/strategies Ofcom undertakes when investigating possible breaches of the EMC Regulations, allowing such suppliers to circumvent Ofcom's enforcement powers and functions.
- Each of these are against the public interest - of ensuring that Ofcom as the enforcement body in this area has sufficient information and strategies to ensure it fulfils its enforcement functions in this area properly.

Annex B

Section 36: Prejudice to Effective Conduct of Public Affairs

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- a. inhibit the free and frank provision of advice,
- b. inhibit the free and frank exchange of views for the purposes of deliberation; or
- c. prejudice the effective conduct of public affairs.

Key points:

- Section 36 can only be used if, in the **reasonable view of a "qualified person"**, disclosure of the requested information would have one of the specified effects.
- The application of section 36 is subject to a public interest balance.

Summary factors for application of the exemption

- Graham Howell, a qualified person for the purposes of s36 of the Act, in his reasonable opinion considers that disclosure of this information would be likely in future to discourage the free and frank provision of information from companies and inhibit the free and frank exchange of views for the purposes of deliberating within an investigation whether there are justifiable grounds for prosecuting.

Summary reasons why public interest favours withholding information

- Ofcom understands that disclosure of the requested information may lead to stakeholders being confident that decisions are taken on the basis of the best available information.
- However, Ofcom considers in this case that the public interest supports the non-disclosure of the information.
- Allowing for a regulatory environment in which parties will provide information freely and openly is to be encouraged because it allows for the more effective use of limited Ofcom resources. Encouraging co-operation between Ofcom and the persons it regulates is important to the effective conduct of public affairs. It is important that Ofcom is able to quickly determine which matters to investigate and to commit resources because of the serious commitment of personnel and time for Ofcom and interested stakeholders when launching an investigation.
- The disclosure of the information requested would not further the public interest but rather would hinder it because of the detriment it would have on Ofcom's ability to effectively consider such investigations.

Annex C

Freedom of Information: Right to know request

Section 36 exemption

The information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act.

I am a "qualified person" as defined in section 36(2) of the Freedom of Information Act 2000 and duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so would or would be likely to prejudice the effective conduct of public affairs.

Also, in applying this exemption I have had to balance the public interest in withholding the information against the public interest in disclosing the information.

I have set out in Annex B the exemption in full, as well as the factors I considered when deciding where the public interest lay.

If you have any queries about this letter, please contact information.requests@ofcom.org.uk.

Signed



Date 07 January 2011

Graham Howell

Secretary to the Corporation

Ofcom

Annex D

Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

Summary factors for application of the exemption

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| <ul style="list-style-type: none">• Ofcom considers the request for Ofcom's internal legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings – and is exempted under s42(1) of the Act. It is advice given by Ofcom's own salaried in-house legal advisers and is connected with the giving or obtaining of legal advice. |
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Summary reasons why public interest favours withholding information
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- | |
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| <ul style="list-style-type: none">• It is in the public interest that policy decisions taken by Ofcom are taken in a fully informed legal context, where relevant. Ofcom therefore needs high quality effectively obtained legal advice for the effective conduct of its business. That advice needs to be given in context, and with a full appreciation of the facts. It needs to be sought and given in a timely fashion to ensure that policy develops in a fully informed way.• Legal advice cannot be effectively obtained unless Ofcom is able to put all the facts before its in-house legal advisers without fear that they may afterwards be disclosed and used to its prejudice. Without such effectively obtained advice, the quality of Ofcom's decision making would be much reduced because it would not be fully informed and this would be contrary to the public interest. |
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