

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 21 March 2012

Public Authority: Office of Communications
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant requested the following:

"Due to the continued significant radio spectrum pollution already causing problems both in the UK and overseas could Ofcom please respond expeditiously and in full to the following questions concerning the most recent thirty cases involving Power Line Technology (PLT).

For the number of cases indicated, please supply full and complete details and documentation of the following from each case: -

- 1. The case reference and date raised.*
- 2. Precise details of the radio spectrum reportedly affected.*
- 3. Where multiple sources were reported or identified, please state the total number of sources determined from your investigation.*
- 4. Whether all identified sources of interference were removed/resolved.*
- 5. Precise details of the make(s) and model(s) of PLT or other equipment determined to be causing interference.*
- 6. Precise details of the radio spectrum range used by the*

equipment as determined during your investigation. Where this is not known, please state the reason this detail was not determined.

7. For those cases in point 4 above where devices were left interfering, please provide a synopsis of the reason the the interference was not removed, please include the case status."

2. The Office of Communications (Ofcom) provided some of the requested information for each of the cases it considered to be within the scope of the complainant's request. It refused to provide information in relation to questions 3, 4 and 5 of the request under regulation 12(4)(b) of the EIR (manifestly unreasonable) and refused to provide case reference numbers under regulation 12(3) (third party personal data).
3. The Information Commissioner (the Commissioner) considers that the complainant's request can be read objectively in two ways and that Ofcom failed to consider the complainant's alternative objective reading of the request. The Commissioner also considers that Ofcom was incorrect to apply the exceptions under regulation 12(3) and regulation 12(4)(b) of the EIR to the relevant parts of the complainant's request. To the extent that Ofcom was obliged to provide the requested information based on the complainant's objective reading of the request, within 20 working days, the Commissioner considers that it failed to comply with regulation 5(1) and (2) of the EIR.
4. The Commissioner had drafted a decision notice that required the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information it holds based on the complainant's objective reading of the request including the case reference numbers for each complaint. If Ofcom withholds any information it should issue a valid refusal notice in accordance with regulation 14 of the EIR explaining the reasons why any redactions have been made.
5. However, before this notice was signed the information was disclosed to the complainant. The decision therefore contains no steps.

Background

6. Power Line Telecommunication (PLT) technology is used to carry data on a domestic mains wiring system using a radio frequency signal. It is generally used to interconnect computers and other IT apparatus around the home. PLT devices use relatively high power levels in order

to send signals down electricity wires. It is the degree of power used by PLT devices which allegedly causes harmful interference affecting radio reception within a particular radio spectrum.

7. Ofcom has provided information on its website about the complaints it has received concerning radio spectrum interference attributed to PLT. It states:

"We have been maintaining statistics on PLT since July 2008. Up to the date of this statement there have been a total of 272 reports of interference attributed to PLT. Every report of interference concerns an inability to receive a transmission on the shortwave band and is made by amateur radio users.

Ofcom endeavours to facilitate the resolution, normally by referring the case to BT. To date 223 cases have been referred to BT with the exception of one case they have all been resolved."

8. The complainant's request relates to these complaints.

Request and response

9. On 21 June 2011, the complainant wrote to Ofcom and requested the information described in paragraph one.
10. Ofcom responded on 6 July 2011. It provided some of the requested information and refused to provide case reference numbers citing regulation 13 of the EIR.
11. On 6 July 2011 the complainant requested that Ofcom review its response as he considered that Ofcom had misread his request and had not provided all of the information he requested.
12. Ofcom responded on 19 July 2011 stating that the information it had provided was what it considered to be within the scope of the complainant's request. In relation to question 3 and 4 of the request Ofcom stated that all of the information had been provided to the complainant. It also stated that to provide further information in relation to question 3 and 4 would be manifestly unreasonable as this would require a detailed research and analysis process. Ofcom refused to provide the information requested in question 5 as it considered this part of the request to be manifestly unreasonable.
13. The complainant requested an internal review on 19 July 2011 and provided additional grounds of review on 20 July 2011.

14. Following an internal review Ofcom wrote to the complainant on 22 July 2011 upholding its previous position.

Scope of the case

15. On 29 August 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider:
- Ofcom's interpretation of his request;
 - Ofcom's failure to provide some of the requested information;
 - the redaction of case reference numbers; and
 - Ofcom's refusal to provide some of the requested information as it determined that to do so would be manifestly unreasonable.
16. The Commissioner will first establish the scope of the complainant's request before considering the other matters raised by the complainant.

Reasons for decision

Objective reading of the request

17. Ofcom and the complainant disagree about the meaning and scope of the request. Ofcom considers that the request should be read to include those cases where a complaint was made about radio spectrum interference with the alleged source identified as PLT but where it was later determined that PLT was not the source of the interference. The complainant has stated that his intention was for Ofcom to only provide information relating to cases where the source of the radio spectrum interference was found to be PLT as a matter of fact in the course of the investigation.
18. The complainant raised this issue with Ofcom at the first opportunity when he became aware of Ofcom's interpretation of his request. He stated:

*"I would like to ask for a quick revisit of this response please. In my request I asked for the "most recent thirty cases involving Power Line Technology (PLT)". Although the majority of cases given do involve PLT, some only reference PLT/A as the "alleged source" and some disclosed were ascertained *not* to be PLT at all and*

therefore fall outside the scope of this request.

So, please may I have the information requested for the thirty most recent cases involving PLT, not cases that include the word, but where your investigations determined that PLT was present, interfering and thus involved."

19. Ofcom did not accept the complainant's explanation of how his request should have been interpreted and stated that its original reading of his request was correct. The Commissioner notes that the wording of the complainant's request is somewhat ambiguous. He also considers that the first paragraph of the complainant's later clarification of the meaning of his request, as outlined above, could be taken to support Ofcom's reading of the request. However, the Commissioner considers that the second paragraph of the complainant's later clarification of his request explains the information he expected Ofcom to provide in response to his request.
20. The Commissioner is satisfied that when he made his request the complainant's intention was for Ofcom to only provide information in relation to cases where the source of the radio spectrum interference was found to be PLT as a matter of fact in the course of the investigation. He does not consider that the complainant sought to expand his request at a later stage. This is further evidenced by the complainant raising his concern about Ofcom's interpretation of his request at the first possible opportunity.
21. The Commissioner considers that the meaning of the request rests on the interpretation of 'involving'. He considers that, given the broad meaning of the term 'involving', both the complainant's and Ofcom's interpretations of the request were possible objective readings. Where this is the case a public authority should provide the information relating to the complainant's intended alternative objective reading of the request.
22. The Commissioner is satisfied that when it responded to the request Ofcom was not aware of any ambiguity in its meaning. Therefore, he appreciates why Ofcom did not request clarification of the request or provide advice and assistance to the complainant to allow him to provide such clarification. He does not criticise Ofcom for its reading of the request. However, given that the complainant raised this issue with Ofcom at the first possible opportunity he considers that Ofcom had a reasonable opportunity to resolve the matter.
23. As Ofcom only provided limited information on the thirty most recent cases based on its reading of the request, the Commissioner considers that some of information it did provide falls outside the scope of the

request. He considers that Ofcom breached regulation 5(1) and 5(2) of the EIR to the extent to which Ofcom was obliged to provide the requested information, and failed to do so, based on the complainant's objective reading of the request. As Ofcom was not aware of an alternative objective reading of the request, there was no breach of its duty to provide advice and assistance under regulation 9 of the EIR.

Regulation 12(4)(b) of the EIR

24. Regulation 12(4)(b) of the EIR states:

"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—...

(b) the request for information is manifestly unreasonable."

25. Ofcom relied on the manifestly unreasonable exception to partially refuse questions 3 and 4 of the request and to refuse to provide any information in relation to question 5 of the request.

26. In response to question 3 of the request, in its further response of 19 July 2011, Ofcom stated:

"The information that Ofcom holds has been provided to you in our original response. Therefore to provide you with any further information to determine where multiple sources of interference have been reported, Ofcom would need to find and extract the relevant information from our case logging systems. This would require a detailed research and analysis process.

Therefore, information on whether multiple sources have been reported is being withheld under the exception in section 12(4)(b) of the EIR. This exception states that Ofcom is not required to provide the information where the request for information is manifestly unreasonable."

27. Ofcom provided a substantially similar response to question 4.

28. In response to question 5 it stated:

"While we hold the details of the make(s) and model(s) of PLT or other equipment determined to be causing interference, the information in the format you have requested is being withheld as it would fall under the exception in section 12(4)(b) of the EIR, as explained above. There is a section on our case logging system which can be used to note the make and model, however, this is not utilised in all cases. Therefore to search each case for this information and extract the relevant information will be time consuming and unreasonable."

29. In the course of his investigation the Commissioner informed Ofcom that he considered it could not claim to have provided all of the requested information in relation to questions 3 and 4 whilst also relying on regulation 12(4)(b) of the EIR. These positions were mutually exclusive. If Ofcom had provided all of the information it held in relation to those questions then it would serve no purpose to rely on an exception. Therefore, it should clarify whether it had provided all of the information or whether it was relying on the fact that determining whether it held any relevant information, and if so providing the information, would be manifestly unreasonable. Ofcom did not accept the mutual exclusivity of these two positions and instead referred to previous requests made by the complainant and general information it has made available on its website, which are not directly relevant considerations in this case.
30. It has become clear in the course of the Commissioner's investigation that Ofcom has not determined whether or not it holds further information relevant to question 3, 4 and 5 of the complainant's request. Ofcom has provided the information that it was able to retrieve by running a report on its electronic case management system "SIEBEL" which it uses to maintain records of radio spectrum interference complaints. The fields on "SIEBEL" do not match the information the complainant has requested and so Ofcom can not run a report to extract all of the information within the scope of the complainant's request.
31. Ofcom has explained that "SIEBEL" contains details of each complaint it has received about radio spectrum interference and the activities that have been undertaken in relation to those complaints. It stated that typically each interference investigation will contain in excess of 10 individual 'action' entries. Each 'action' contains a number of data entry fields populated with defined data or free text. The number of actions in each complaint depends upon the complexity of the investigation.
32. Ofcom has further explained that the complainant's request includes information that does not correspond to the information Ofcom would generally record in the data entry fields. Ofcom also noted that some fields are left blank and the information that is recorded on each case will depend on the individual completing the action on the complaint. Therefore, in order to fully answer the request it would be necessary to review each case manually to determine whether relevant information was held. Ofcom estimated that on average each complaint would have 15 activities logged such as emails, phone calls and updates. On this basis it estimated that it would take 15 minutes to search each case and extract any information within the scope of the request.

33. The Commissioner notes that on the complainant's objective reading of the request providing the requested information may take longer than on Ofcom's reading of the request. This is because on reviewing each complaint Ofcom may determine that PLT devices were not the cause of the radio spectrum interference and so the information in that case would fall outside of the scope of the request. However, the complainant has explained to the Commissioner that he limited his request to the thirty most recent complaints for that very reason, being mindful that Ofcom would be required to search through more than thirty cases to provide the information he requested.
34. The Commissioner considers that it would be possible to reduce the scope of Ofcom's search by narrowing down the number of cases it has to access on "SIEBEL". The fields on "SIEBEL" would allow Ofcom to discount certain complaints that would not fall within the scope of the request. For example, all cases where the 'Resolution' field is recorded as 'Inconclusive resolution' could be discounted from the search as Ofcom's investigation did not conclusively determine that radio spectrum interference was caused by PLT devices and the information would not fall within the scope of the request. Similarly, the 'Source' field would also allow Ofcom to remove any cases from the search where the source of interference was determined to be anything other than 'PLA/T device'.
35. The Commissioner appreciates that it is unlikely Ofcom will be able to narrow down the search on "SIEBEL" to the extent that it will only have to search cases where the information will fall within the scope of the request. This is because on closer inspection of some cases Ofcom may find that PLT devices were not determined to be the cause of the radio spectrum interference. However, he considers that it should enable Ofcom to considerably narrow down the number of cases it would have to search to provide the requested information. The Commissioner has not been provided with any evidence to suggest that it would be particularly onerous to search for, and extract, the requested information.
36. The Commissioner considers Ofcom's estimate of the time it would take to review each case is reasonable. He accepts that some of the information the complainant has requested is not routinely recorded in the fields within "SIEBEL". This would mean that each case would have to be reviewed to determine whether any information is held and, if so, that information would have to be extracted in order to respond to the request. However, based on the estimate Ofcom has provided and the fact that Ofcom could narrow down its search, the Commissioner does not consider that to provide the requested information for the most recent thirty cases, where interference was determined to have been caused by PLT devices, would be manifestly unreasonable.

Regulation 12(3) of the EIR – Case Reference Numbers

37. Regulation 12(3) of the EIR provides an exception where the disclosure of personal data would be “otherwise than in accordance with regulation 13”.
38. Regulation 13(1) of the EIR provides that information cannot be disclosed to the general public (all disclosures made under the EIR are considered to be to the general public rather than just the requester) if that disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (“the DPA”).
39. Ofcom has refused to disclose the case reference numbers for each complaint. It has argued that case reference numbers, together with the other information it has disclosed to the complainant and information that may be available by other means, would be personal data. It considers that the disclosure of case reference numbers would breach the first data protection principle.
40. The Commissioner must first consider whether the withheld information is personal data. If he is satisfied that it is, he will then go on to consider whether disclosure would breach the first principle of the DPA.

Is the information personal data?

41. Section 1(1) of the DPA, personal data can be defined as follows:

“personal data’ means data which relate to a living individual who can be identified –

- *from those data, or*
- *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”

The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable.

42. For regulation 12(3) of the EIR to be engaged and regulation 13 of the EIR to be considered the requested information must be personal data of a person other than the applicant. In order to determine whether Ofcom’s case reference numbers are personal data the Commissioner must consider what information is available in the public domain and,

where relevant, what information may be available to a limited group of individuals. Where a member of the general public can, on the balance of probabilities, identify individuals by combining the requested information with other information available to them, then the information is personal data. Whether it is possible to identify individuals from the requested information is a question of fact based on the circumstances of the specific case.

43. Ofcom has explained that the case reference numbers are generated by Ofcom's case management system. The Commissioner asked Ofcom to explain why disclosing case reference numbers would lead to individuals being identified. Ofcom has stated that case reference numbers are not personal information in isolation but it may be possible for the case reference numbers to be combined with other information, and the information Ofcom has already released, to enable individuals to be identified.
44. The fact that it is theoretically possible for information to be personal data is not enough to engage regulation 12(3) of the EIR. It has to be established that the requested information is personal data on the balance of probabilities. The Commissioner will consider what information is likely to be already available, and to whom, and the likelihood of the various types of information being combined in the way suggested.
45. Ofcom has directed the Commissioner to two external sources of information to support its position. These are a members only online PLT forum and an extract from an interference report form which individuals can use to report radio spectrum interference to the Radio Society of Great Britain (RSGB). Ofcom has not provided any evidence of information available in the wider public domain that could be combined with the case reference numbers and the other information Ofcom has disclosed to enable individuals to be identified. Therefore, the Commissioner has considered whether the case reference numbers are personal data at the point of disclosure based on the further sources of information Ofcom has identified.

PLT Forum

46. The Commissioner has been unable to access the forum on PLT issues as it is only accessible to members. Ofcom has not provided any evidence that individuals have published their case reference numbers on the forum. However, the Commissioner accepts that this is a possibility. If individuals had done so it would be theoretically possible for the information on the forum to be combined with the case reference numbers and the other requested information to enable an individual to be identified. If an individual could be identified then the

case reference number and the associated information would be that individual's personal data.

47. The Commissioner considers that Ofcom's position makes a number of assumptions that have not been established. In these circumstances the requested information would only be personal data if the individuals that made the 30 most recent complaints to Ofcom, where radio spectrum interference was determined to have been caused by PLT, had published their own case reference numbers on the PLT forum. The individuals would also have had to post to the forum using their real names. There is no evidence to suggest this has happened. If there was evidence to suggest that individuals had published their own case reference numbers it would be necessary to establish that somebody with access to the forum would be likely to combine the information in the way suggested.
48. The Commissioner considers that, on the balance of probabilities, the case reference numbers and associated information is unlikely to be personal data based on the hypothetical possibility that individuals may have made details of their own complaints available to a limited number of individuals on a members only online PLT forum.

RSGB's interference report

49. The RSGB website states the following in relation to interference reports that individuals can make on its website:

"The RSGB cannot investigate your complaint, but may offer advice and in some cases assistance in preparing the information for a formal complaint to Ofcom. Just as importantly, the database which we build up from complaints will help us in our discussions with Ofcom."

50. The information Ofcom has provided shows that RSGB's interference report form includes a field for individual's to provide their Ofcom case reference number. The Commissioner has been unable to access the remainder of the interference report form on the RSGB website as the link was not working at the time of his investigation. However, he accepts that if Ofcom disclosed case reference numbers, and an individual had also reported an interference issue to the RSGB, it is likely that the RSGB would be able to identify the individual from the information Ofcom released because of the information the individual had already provided to RSGB. There is no evidence to suggest that any person other than the RSGB would be able to combine the information in the way suggested.
51. In these circumstances the RSGB would already know the identity of the individual from the information it had in its possession. The Commissioner considers that on the specific facts of this case it is

extremely unlikely that the RSGB would combine the information it holds with the requested information. He considers that as individuals voluntarily supply information to the RSGB, the RSGB would ask the individual directly for any information it deemed necessary for its own purposes.

52. The fact that there is a hypothetical possibility that the RSGB may be able to identify individuals from the requested information does not mean that the requested information is personal data at the point of disclosure. The likelihood of the RSGB combining the requested information with the information already in its possession is extremely remote.
53. The Commissioner considers it unlikely that disclosing case reference numbers would lead to a member of the public, the RSGB or individuals with access to the member's only online PLT forum, identifying the individuals that made complaints to Ofcom. As the Commissioner is unaware of any other information in the public domain which could be combined with the requested information to enable individuals to be identified he is satisfied that case reference numbers and the associated information would be anonymous at the point of disclosure. Therefore, the requested information is not personal data and regulation 12(3) of the EIR is not engaged.

Right of appeal

54. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

55. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

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