

Reference: 01594990

Information Requests
information.requests@ofcom.org.uk

4 May 2023

Freedom of Information request: Right to know request

Thank you for your follow-up request for information concerning IX Wireless and IXWBuild. Your follow-up request was received on 5 April 2023 and we have considered it under the Freedom of Information Act 2000 (the “FOI Act”).

Your request

I write with regard to the reply to my request for information regarding IX Wireless and IXWBuild.

- 1. The number of complaints (including dates and/or towns/cities) made to Ofcom by the public regarding the rollout and installation of electronic communications infrastructure since the company/companies received permission from Ofcom*
- 2. The number of complaints made to Ofcom by local authorities (including dates and/or towns/cities) regarding the roll-out and installation of electronic communications infrastructure since the company/companies received permission from Ofcom*
- 3. The number of actions taken by Ofcom against the same company/companies with regard to the complaints listed in 1 and 2 above*
- 4. If no action was taken by Ofcom with regard to any complaint, the full reasons for non-action*

Background

The electronic communications code (the Code) is set out in Schedule 3A to the Communications Act 2003 (the Act). It is designed to facilitate the installation and maintenance of electronic communications networks. It confers rights on providers of such networks and on providers of systems of infrastructure to install and maintain apparatus on, under and over land and results in considerably simplified planning procedures.

We consider applications for the grant of Code powers from providers of electronic communications networks and providers of systems of infrastructure (or both) with reference to the matters set out in section 107(4) of the Communications Act 2003.

Operators who have been granted Code powers by Ofcom are required to comply with any restrictions or conditions imposed under the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 , as amended (the Regulations)¹ We have a statutory enforcement role regarding compliance by Code Operators with restrictions and conditions imposed under the Regulations, and may exercise these powers to require Code Operators to take steps to remedy the consequences of a contravention/breach, impose a penalty, and/or suspend the operator's Code powers where there has been a repeated or serious contravention of the restrictions or conditions.

However, Ofcom does not have dispute resolution powers in these matters, or powers to prevent or remove the installation of electronic communications apparatus in any particular instance, provided the Code Operator concerned has abided by their obligations under the Regulations and Code. For example, under Regulation 5 of the Regulations, Code Operators are required to notify the local planning authority in writing in certain instances where they are installing electronic communications apparatus e.g in instances where they have not previously installed electronic communications apparatus in the area and are intending to install such apparatus (other than lines) in that area. However Code operators do not necessarily have to consult with residents directly. It is open to the local planning authorities to consider whether to engage with residents on any plans.

More information on the Electronic Communications Code can be found on our [website](#).

Our response

We can confirm that we hold information falling within scope of the above questions however we consider that disclosure of this information is exempt under section 44 of the FOI Act.

Section 44 of the FOI Act exempts the disclosure of information which is prohibited by another enactment. In this case, we are prohibited under section 393 of the Communications Act 2003 (the Act) from disclosing information which relates to a business (in this case, IX Wireless and IXWBuild), which we have obtained in exercising our powers, unless we have the consent of that business or one of the statutory gateways for disclosure under section 393(2) of the Act is met, neither of which applies here. This disclosure prohibition would cover complaints (if any) made against IX Wireless and IXWBuild. This includes information on the number of complaints (as emphasised in this [Information Commissioner decision](#)²), and our views, considerations, and other internally created information where the 'created' information incorporates information we have received from another party (as emphasised in this [Information Commissioner decision](#)³).

Section 44 is an absolute exemption and does not require a public interest test.

If you have any further queries, then please send them to information.requests@ofcom.org.uk quoting the reference number above in any future communications.

Yours sincerely

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¹ <https://www.legislation.gov.uk/ukxi/2003/2553/contents/made>

² See paragraphs 10 to 13 of that decision.

³ See paragraph 16 of that decision.

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law, you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

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 responding to 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 information.requests@ofcom.org.uk

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. Further information about this, and the internal review process can be found on the Information Commissioner's Office [here](#). Alternatively, the Information Commissioner can be contacted at:

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