

Reference: 01824558

Information Requests  
[information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)

21 June 2024

## Freedom of Information request: Right to know request

Thank you for your request for information concerning code powers and installation over public highways.

We received this request on 23 May 2024 and we have considered your request under the Freedom of Information Act 2000 (“the FOI Act”).

### Your request & our response

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*I am looking for general information, in addition to specific information regarding IX Wireless. The information request is as follows:*

*“Are you required to undertake an impact assessment of those companies that you provide jurisdiction to deliver services under ‘the code’ (code powers under the communications act)?”*

When granting powers under the Electronic Communications Code<sup>1</sup> (the Code), Ofcom is required to comply with its duties under the Communications Act 2003 (the Act) including its duties under section 7 of the Act relating to the carrying out of impact assessments. For further information on our duties, you may wish to have a look at section 2 of this recent consultation: [Consultation: Proposal to apply Code powers to Frogfoot Networks Limited](#). Additionally, paragraphs 2.23 to 2.35 of this consultation is an example of what we say about our impact assessments.

*“If so, please provide evidence of the impact assessment undertaken for the above company/companies.*

*Of the 253 companies that you have granted code powers to, how many applications included the authority to install on or over public highways?*

*Of the 253 companies that you have granted code powers to, how many of these have retrospectively applied to modify and extend their terms to include installation on or over public highways?*

*Please can you advise who is responsible for ensuring any company that is granted code powers, act responsibly and ethically within the parameters of the code?*

*If nobody, please advise what recourse the public has on those companies that contravene their authority?*

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<sup>1</sup> This is set out in Schedule 3A of the Communications Act 2003

*Please can you advise the duration each company is provided 'code powers' for and what, if any, reapplication they have to undertake?"*

We note that you initially mention “specific information regarding IX Wireless” in your request, but then do not specify IX Wireless again in any of your questions. Therefore, we understood that your questions related to all companies in general, including IX Wireless and those granted Code powers under the licensing regime that applied prior to 25 July 2003.

The information you have requested is not held in a readily accessible format and it would take us a substantial amount of time to respond to your request. We do not have a central record of which persons have Code powers that extend to public highways or of whose Code powers have been modified. To collate the information you have requested, it would be necessary to review all the directions issued granting Code powers, and in the case of those prior to 2004, the archived licenses.

We therefore consider that we are not obliged to comply with your request pursuant to section 12 of the FOI Act. Section 12 of the FOI Act provides that we are not obliged to comply with a request for information if we estimate 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 (“the Regulations”), and is, for Ofcom, £450. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, 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, which equates to 18 hours of time. We estimate that it would take us more than 18 hours to identify the information from all the records of persons that hold Code powers.

You may wish to narrow your request, for example by tailoring your questions to a specific person or operator. Should you decide to make a further request for information, please note that other exemptions may apply (for further information on the exemptions under the FOI Act, see the Information Commissioner's Office's website).

We can confirm that most Code powers granted by Ofcom extend to public highways and that the consultations we publish relating to us granting Code powers cover off our impact assessments in those particular cases.

While Ofcom may limit the extent of one's Code powers in accordance with [section 106\(5\)](#) of the Act e.g. in relation to location, this provision does not give us the power to grant Code powers for only a set amount of time. We do however have powers to modify, suspend and revoke Code powers in certain circumstances, see [sections 113 to 115](#) of the Act.

Highways authorities are responsible for enforcement of rules relating to street works as set out in street works legislation.<sup>2</sup> Ofcom is responsible for enforcing certain conditions and restrictions attached to the Code as set out in [the Electronic Communications Code \(Conditions and Restrictions\) Regulations 2003](#), some of which relate to works undertaken by Code operators in public highways. Please see Annex 9 of our Regulatory Enforcement Guidelines for further information on our enforcement role relating to these conditions and restrictions: [Regulatory Enforcement Guidelines for investigations](#)

If you have any further queries, then please send them to [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk) – quoting the reference number above in any future communications.

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<sup>2</sup> New Roads and Street Works Act 1991 and The Street Works (Northern Ireland) Order 1995

Yours sincerely,

## Information Requests

### **Request an internal review**

If you are unhappy with the response you have received to your request for information, or think that your request was refused without a reason valid under the law, you may ask for an internal review. If you do, it will be subject to an independent review within Ofcom. We will either uphold the original decision, or reverse or modify it.

If you would like to ask us to carry out an internal review, you should get in touch within two months of the date of this letter. There is no statutory deadline for us to complete our internal review, and the time it takes will depend on the complexity of the request. But we will try to complete the review within 20 working days (or no more than 40 working days in exceptional cases) and keep you informed of our progress. Please email the Information Requests team ([information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)) to request an internal review.

### **Taking it further**

If you are unhappy with the outcome of our internal review, then you have the right to [complain to the Information Commissioner's Office](#).