

Reference: 01821587

Information Requests
information.requests@ofcom.org.uk

13 June 2024

Right to know request

Thank you for your request for information about an interference case.

We received this request on 15 May 2024 and we have considered it under the Environmental Information Regulations 2004 ('the EIR').

Your request

"Could you please provide me with the following information :

- 1, A copy of the visit report including measurements. Photographs etc.*
- 2, How was compliance determined and against which standards ?*
- 3, What brand were the lights and what type approvals do they conform to ?*
- 4, Information about the lights in particular, are they a genuine brand or a counterfeit knock off.*
- 5, Information about the supply device in particular, is it a genuine brand or a counterfeit knock off."*

Our response

In relation to 3, 4 and 5 above, we do not hold this information though we can inform you that the lights were LED lights.

In relation to 1 and 2, we looked into this matter and following an initial assessment, we considered that there did not appear to be a breach of the Wireless Telegraphy Act 2006 or of the Electromagnetic Compatibility Regulations 2017. Given we did an initial assessment, we hold some information in scope of this request. However, we are unable to disclose this information as we consider that it's exempt from disclosure under the EIR. In particular, the EIR states that a public authority may refuse to disclose:

- environmental information if its disclosure would adversely effect, among other things, the ability of a public authority to conduct an inquiry of a criminal nature." (Regulation 12(5)(b) of the EIR)
- information to the extent that the request involves the disclosure of internal communications. (Regulation 12(4)(e) of the EIR)

In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. In the annexes below, we have

set out the exemptions in full, as well as the factors Ofcom considered when deciding where the public interest lay.

We also consider that Regulation 12(4)(d) of the EIR which relates to requests about “*material which is still in the course of completion, to unfinished documents or to incomplete data*”, may be applicable here.

You may wish to refer to [Our approach to spectrum compliance and enforcement - Ofcom](#) for further information.

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,

Information Requests

Annex A

Regulation 12(4)(e) of the EIR:

(1) A public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5);.....

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

(e) the request involves the disclosure of internal communications.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Open policy making and public confidence in regulated activities. 	<ul style="list-style-type: none"> • Ofcom staff should have the necessary space to think in private when determining what the appropriate action to take is in relation to complaints made. • As part of this process, colleagues will gather information and share this in order to facilitate discussion. Given we did not carry out a formal investigation (which would normally include getting representations from parties involved about the information we have), the information we hold will not provide a view of Ofcom’s final decision or provide a full picture. • We consider that disclosure of the information relating to the initial assessment will not be in the public interest as it will not reflect final/complete findings and may be misconstrued.
Reasons why public interest favours withholding information	
<ul style="list-style-type: none"> • We consider that the public interest in withholding disclosure of this information outweighs the public interest in disclosing it. We note that, in this case, having looked into the relevant complaint, we wrote to the complainant explaining our reasoning for not proceeding to investigate. 	

Annex B

Regulation 12(5)(b) of the EIR

(1) A public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5);.....

(5) For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect - ...

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none">• Open policy making and public confidence in regulated activities.	<ul style="list-style-type: none">• To enable us to protect the effective investigation and prosecution of offences process.• Disclosure would be likely to deter stakeholders from supplying information for the purpose of an enquiry phase when considering grounds for an investigation as fully and frankly as possible.• Companies would be likely to be deterred from disclosing information and from co-operating fully with regulatory bodies thus prejudicing the exercise of Ofcom’s regulatory functions.• This is not a matter we took forward to formal investigation therefore parties were not given the chance to give representations on the contents/information we hold.• We consider that disclosure of the information relating to the initial assessment will not be in the public interest as it will not reflect final/complete findings and may be misconstrued.
Reasons why public interest favours withholding information	

- We consider that the public interest in withholding disclosure of this information outweighs the public interest in disclosing it.
- The regulatory system is intended to allow Ofcom to conduct enquiries to ascertain any grounds to support a formal investigation without disclosure of details. Disclosure would deter companies from co-operating with Ofcom and thus protract the enquiry phase.
- 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. 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.

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) 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](#).