

30 March 2015

Case Reference Number IRQ0576154

Dear Sir

Request for Information

We are now in a position to provide a partial response to your request for information of 28 February 2015 to the Information Commissioner's Office (ICO).

We have dealt with your request in accordance with your 'right to know' under section 1(1) of the Freedom of Information Act 2000 (FOIA), which entitles you to be provided with any information 'held' by a public authority, unless an appropriate exemption applies.

Request

You asked for "*all info relating to your PECR audit of Talk Talk, news of which was announced December 2014*"

Information Held

We do hold information within the scope of your request.

We have identified some information which we consider can be disclosed to you and are in the process of gathering this information. Unfortunately, we are not able to provide it alongside our response. We are in the process of consulting with TalkTalk over some of the information which is more administrative in nature, and we haven't been able to conclude this in time for which we apologise. We regret this delay and can assure you that we are working to finish processing your request as quickly as possible.

Information Withheld

Section 31 (1) (g)

Having considered the information we hold about our PECR audit of TalkTalk, the purpose for which this information was generated and the context in which it is held, we find that some of this information exempt is from disclosure. This includes the final audit report, any draft versions of

that report and the executive summary. It also includes any documents which contain details of specific security measures and controls which TalkTalk have in place. This includes copies of any TalkTalk policies and procedures, notes regarding the evidence we observed and interviews we conducted, as well as a of number internal and external emails.

The information is exempt under section 31(1)(g) of the FOIA. This exemption applies when disclosure would prejudice our ability to carry out our statutory function.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "*would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*"

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and (c).

The purposes referred to in sections 31(2)(a) and (c) are –

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,"

These purposes apply when we consider where to focus our resources and assess the compliance of other organisations with the legislation we regulate.

It is essential that we are able to carry out our regulatory functions effectively. This includes being able to audit the measures taken by providers of a public electronic communications service (service providers) to safeguard the security of that service under the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (PECR).

Our ability to conduct effective audits of service providers would likely be prejudiced if service providers felt constrained from sharing with us full details of the technical and organisational security measures they have taken in order to safeguard the security of their service because this information might be disclosed into the public domain.

As the PECR audit was recent, it is still relevant to our ongoing relationship with TalkTalk and the release of this information would be detrimental to our regulatory effectiveness at this time. It is therefore not appropriate for this information to be disclosed.

As you may be aware, the section 31 exemption is not absolute. We must balance the public interest and decide whether the public interest favours maintaining the exemption or disclosing the information.

In this case the public interest factors in favour of disclosing the information are:

- Increased transparency in the way we conduct our PECR audit function;
- Increased transparency around the technical and organisational security measures we review when conducting a PECR audit;

The factors in favour of maintaining the exemption are:

- It is vital that we are able to have effective and productive relationships with all the service providers we regulate and that they continue to engage with us in an open, cooperative and collaborative way without fear that information they provide to us or the detail of our working with them will be made public.
- We work hard to engender useful and productive working relationships with the organisations we regulate and disclosing information they have provided to us, against their wishes, is likely to have a detrimental impact on those relationships.
- The potentially detrimental effect providing details of organisational and technical security strengths and weaknesses identified during a PECR audit engagement might have on the service provider's ability to carry on its services securely.
- The need to meet the service providers' expectations of confidentiality and non-disclosure having ascertained their views on the disclosure of the Executive Summary at the time of the audit and again as part of considering this information request. As explained in the PECR Guide to Audit, where an audit is consensual, organisations will be asked for their consent to publish and where it is not provided the ICO will only publish a comment.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it. We are sorry that in this instance we are unable to provide you with some of the information you requested.

Review Procedure

If you are dissatisfied with this response and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or email accessicoinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

A copy of our review procedure can be accessed from our website.

https://ico.org.uk/media/about-the-ico/policies-and-procedures/1883/ico_review_procedure.pdf

Yours sincerely

Ashley Duffy
Lead Information Access Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
T. 01625 545625 F. 01625 524510 ico.org.uk twitter.com/iconews
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