

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

Date: 20 September 2024

Public Authority: Ofcom
Address: Riverside House
2A Southwark Bridge Road
London SE1 9HA

Decision (including any steps ordered)

1. The complainant has requested the proposed locations for Mobile Network Operators' masts in Scotland. Ofcom has withheld the information under regulations 12(5)(a) and 12(5)(e) of the EIR, which concern national security and commercial interests.
2. The Commissioner's decision is that Ofcom is entitled to rely on both of these exceptions to withhold the requested information.
3. It's not necessary for Ofcom to take any corrective steps.

Request and response

4. On 25 January 2024, the complainant wrote to Ofcom and requested information in the following terms:

"I would be grateful if you would send me, under Freedom of Information, the nominal mast locations proposed by each Mobile Network Operator in their Initial Radio Plan for Scotland as submitted for their TNS upgrades."
5. Ofcom responded on 31 February 2024. It withheld the information under regulation 12(5)(a) of the EIR

6. Following an internal review Ofcom wrote to the complainant on 24 May 2024. It maintained its position.
7. Correspondence continued and on 17 July 2024 Ofcom wrote to the complainant again. It confirmed it was continuing to rely on regulation 12(5)(a) and said that regulation 12(5)(e) might also apply.

Reasons for decision

8. This reasoning focusses on Ofcom's application of regulation 12(5)(a) and regulation 12(5)(e) of the EIR to the complainant's request.

Regulation 12(5)(a) – national security

9. Under regulation 12(5)(a) of the EIR a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
10. In their request for an internal review, the complainant said that mast locations are specified in planning applications; that they can only be built once planning approval is granted and can only be relevant to national security after they've been built.
11. The complainant also said that another Government agency - NatureScot – had published a list of map references for Shared Rural Network masts proposed in Wild Land Areas. They also said that in its recent 4G infill programme, the Scottish government published a full list of the 55 proposed mast locations.
12. In its correspondence to the complainant, Ofcom said it had considered previous advice from HM Government on the potential implications of disclosing information relating to the location of mobile sites (and other information relating to mobile sites) in the context of national security. It said that HM Government has raised significant concerns with Ofcom about releasing this type of information on national security grounds and has advised that disclosing this type of information would adversely affect national security.
13. In its public interest considerations Ofcom explained that Government's concerns were focussed on four areas:
 - Espionage/sabotage: Publishing this type of information could enable an attacker to survey remotely which mobile sites would be of interest from an espionage, sabotage or disruption perspective.

- Jamming: Publishing this type of information could enable the jamming of radio signals.
 - Physical security: Information relating to hub sites (mobile sites that act as their own radio coverage site and also serve to 'daisy chain' other sites), switch sites, and data centres would be of particular concern from a national security perspective. The physical security of hub sites will become even more important as features such as Mobile Edge Computing become widely available.
 - Developments in emergency services communications: In the future, knowledge of commercial networks could help enable an attacker to target the UK's emergency service communications network to a degree that knowledge would not have enabled in the past. This is due to the Emergency Services Network programme switching emergency service communication from the private Airwave network to a commercial network.
14. Ofcom went on to say that Government has acknowledged that where detailed technical information isn't requested, an attack is more difficult. However, it said, site location provides the starting point for an attack to gain and build additional and more detailed information that may then make any subsequent attack more likely to succeed.
 15. Ofcom said that Government is also concerned that disclosing information about mobile sites in Scotland would set a precedent for disclosure in response to requests about other geographic areas, resulting in further aggregation of information on mobile sites.
 16. Noting that current open source options are of much more limited use to a potential attacker than the data being requested, Ofcom said that the requested data set has the potential to be more damaging due to both its granularity and its authoritative status [ie the information having been disclosed by Ofcom under the EIR].
 17. The Commissioner asked Ofcom why it considers that publishing the mast site locations requested in this case would adversely affect national security, when this didn't appear to have been a consideration for NatureScot and the Scottish government.
 18. He also queried whether locations would be put in the public domain through the planning process or be generally known once a mast is actually installed on site, or both.
 19. Ofcom didn't address the information published by NatureScot. But it advised that, regarding the 4G infill programme, the mapping information that the Scottish government has published provides only

broad location information; the request in this case is for specific site locations, eg in grid coordinate format.

20. The Commissioner carried out his own research on the information NatureScot had published. A statement dated 9 February 2024 on the Shared Rural Network (SRN) website concerning NatureScot's response to an information request says:

"...The list of proposed locations shared by Nature Scot in response to an FOI request regarding proposed locations in Wild Land Areas (198) is out of date and does not reflect the current SRN plan. Almost all proposed locations listed have either been removed from the plan (47) or moved location as a result of site investigations (148)."

21. Regarding the matter of the planning process, Ofcom noted that it had acknowledged in its responses to the complainant that a site location may ultimately be disclosed as part of a planning process. But it had also advised that, according to Government's advice, such isolated disclosure is likely to carry a lower security risk compared to the disclosure requested in this case. In particular, it had noted that "[t]he security risk is also materially higher when all of the requested information is aggregated into a single user-friendly dataset and published".

22. Ofcom also provided the following further reasoning:

"In essence, in light of Government's advice, we are concerned that information about specific site locations would increase the national security risks by facilitating the creation of a site location data set. In particular:

a. Providing precise mast location - We consider the national security risks associated with disclosing the precise location of masts (e.g. in grid coordinate format) to raise a different and higher national security risk than disclosing the broad location of masts. We consider that relying on broad locations is, for example, likely to make it much harder for a bad actor to coordinate an attack.

b. Providing a data set - In light of Government's advice, we also consider the national security risks associated with disclosing the location of masts in a single, aggregated and user-friendly data set to raise a different and higher national security risk than the ad hoc disclosure of some mast locations as part of a planning process. We consider that relying on information published by planning authorities is, for example, likely to make it much harder for a bad actor to coordinate an attack. This is because there may be incomplete information held by planning authorities, information may be difficult to

obtain from the planning authorities and it is likely to take a significant amount of time to build up any meaningful dataset.

c. Progressive disclosure - As noted in our February 2024 response, "Government is also concerned that disclosure of information on mobile sites in Scotland would set a precedent for disclosure in response to requests about other geographic areas, resulting in further aggregation of information on mobile sites." For the avoidance of doubt, we do hold information on all mobile sites, including those supporting the Emergency Service Network ("ENS") used by the emergency services in the UK."

23. The Commissioner accepts that the type of specific information the complainant has requested isn't in the public domain. The information the Scottish government has published is broader, and the information that NatureScot published is, for 195 of the 198 instances, out of date. It's also the case that because one body has published certain information, that doesn't mean that another body is therefore obliged to publish the same type of information. Each public authority is entitled to manage information as it considers is appropriate. The Commissioner has also noted Ofcom's reasoning about information disclosed through the planning process.
24. For the reasons Ofcom has provided to the complainant and to him, the Commissioner is satisfied that disclosing the specific detail about the sites of all the mast locations – in one disclosure - would adversely affect national security. Ofcom was entitled to apply regulation 12(5)(a) to the request and he's gone on to consider the public interest test associated with this exception.

Public interest test

25. The Commissioner has found that disclosing the requested information would adversely affect national security. The public interest in disclosing the information would therefore have to be very significant – greater than the EIR's general presumption in favour of disclosure – to justify this outcome.
26. The Commissioner hasn't been presented with any compelling public interest arguments for the information's disclosure and he's therefore satisfied that the public interest rests in maintaining the regulation 12(5)(a) exception to protect national security.
27. Although he's found that regulation 12(5)(a) is engaged and the public interest favours maintaining this exception, for completeness the Commissioner will also consider Ofcom's application of regulation 12(5)(e) to the request.

Regulation 12(5)(e) – commercial information

28. Under regulation 12(5)(e) of the EIR, a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
29. The Commissioner considers four tests when he's considering whether regulation 12(5)(e) is engaged.
30. First, is the information commercial or industrial in nature? In its submission to him, Ofcom says that the Mobile Network Operators (MNOs) have noted that the required site location information is commercial in nature because it relates to economic activity involving negotiating terms with a landowner, building and deploying telecommunications equipment, as well as planning and procurement activities. More generally, Ofcom considers the required site location information to be commercial in nature because the MNOs' main commercial activity is to sell their mobile services and the MNOs' network plans underpin the provision of such services. For the reasons Ofcom has provided, the Commissioner accepts that the requested information is commercial in nature.
31. Second, is the confidentiality provided by law? Ofcom has confirmed that information on nominal site location for TNS sites was provided to it on a confidential basis in accordance with Ofcom's remit. In particular, the MNOs shared it with Ofcom (on the basis that Ofcom would treat it as commercially sensitive information) for the specific purpose of enabling Ofcom to assess their initial radio plans in accordance with paragraph 2.8 of the 'Notice of compliance verification methodology'¹. All the MNOs indicated that they consider the information to be commercially confidential/sensitive, with an MNO noting that "the legal agreement between the MNOs specifies that the dataset is confidential." Therefore, Ofcom considers that the information is subject to a duty of confidence because information "with respect to a particular business" (in this case, the MNOs) which has been provided to it in light of its spectrum management powers (in this case, Ofcom's powers to monitor compliance with the relevant coverage obligations) is subject to the

¹ <https://www.ofcom.org.uk/siteassets/resources/documents/spectrum/spectrum-information/mobile-coverage-obligation/shared-rural-network-compliance-methodology.pdf?v=369242>

general restrictions set out in section 111² of the Wireless Telegraphy Act 2006. Ofcom also notes that any confidential information provided to it is subject to restrictions on its further disclosure under the common law of confidence.

32. The Commissioner accepts that circumstances in which the information is held, and Ofcom's reason for holding it, would, in his view, be sufficient to impose an obligation of confidence on Ofcom. He's satisfied that Ofcom's employees who had access to the information would understand that the information was to be held in confidence; the information therefore has that necessary quality of confidence.
33. Third, is the confidentiality protecting a legitimate economic interest? For this test it's necessary to consider how sensitive the information is at the date of the request and the nature of the harm that would be caused by disclosure. The timing of the request and whether the commercial information is still current are likely to be key factors.
34. Ofcom has advised that the MNOs noted (and Ofcom considers it reasonable) that there is an economic imperative that site acquisition costs are minimised, particularly as such site costs will be funded by Government grant and ultimately therefore by the taxpayer. The MNOs noted that also subsequent site costs, including rental charges, should be minimised. In summary, Ofcom considers that, in light of the MNOs' comments, the confidentiality has to be maintained to protect the mobile operators' economic interest in minimising the MNOs' site acquisition costs and subsequent site costs, including rental charges.
35. The Commissioner is satisfied that the third test is met. The interests that the MNOs consider would be adversely affected through disclosure are economic interests and the Commissioner agrees that the concerns they have are valid. The matter of where masts might be located was also live – and so the withheld information was current – at the time of the request.
36. Fourth and finally, would disclosure adversely affect the confidentiality? Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it's inevitable that this element will be satisfied. Disclosing truly confidential information into the public domain would inevitably harm the

² <https://www.legislation.gov.uk/ukpga/2006/36/section/111>

confidential nature of that information and would also harm the legitimate economic interests that have been identified.

37. Since the four elements of the exception test have been met, the Commissioner is satisfied that the information that Ofcom is withholding under regulation 12(5)(e) of the EIR engages that exception. He's gone on to consider the associated public interest test.

Public interest test

38. As has been noted, the EIR feature a general presumption in favour of disclosing information, which is under regulation 12(2). However, in their complaint to the Commissioner the complainant didn't present any specific public interest arguments for disclosing the information they've requested in advance of any information that may be disclosed gradually and in time, for example through the planning process.
39. In the absence of any compelling arguments for disclosure, the Commissioner considers that there's greater public interest in protecting the public purse by ensuring that the process of acquiring and renting mast site locations is carried out with the maximum efficiency. This is more likely to be achieved by withholding the information requested in this case.
40. In the Commissioner's view, such wider public interest as there is in the specifics of the mast locations will be addressed through the usual channels – for example, through the planning process or through information relevant bodies proactive publish.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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