

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

**Date:** 15 April 2025

**Organisation:** British Telecommunications PLC  
**Address:** 1 Braham Street  
London  
E1 8EE

**Decision (including any steps ordered)**

---

1. The complainant has requested information about a specific telephone connection. BT declined to answer the request because it did not consider that it was subject to the EIR.
2. The Commissioner's decision is that part 1 of the request was for environmental information. He also finds that BT is subject to the EIR and was therefore under a duty to respond to the request.
3. The Commissioner requires BT to take the following steps to ensure compliance with the legislation.
  - Issue a response to part 1 of the request in accordance with the EIR.
4. BT must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Nomenclature**

---

5. For ease, the Commissioner has referred in this notice to "BT". Each such reference should be read as referring to the company identified at the top of this notice. The Commissioner recognises that "BT" is essentially a brand associated with several companies within the BT Group of companies. However it is the company named in this decision that is registered with Ofcom and that is subject to a Universal Service Obligation.

## **Request and response**

---

6. On 27 January 2024, the complainant wrote to BT and, referring to a specific property, requested information in the following terms:  
  
    "1. Can you confirm the date if any , that a telephone line was installed at this location ?  
  
    2. Can you also confirm that wall mounted telephones were not installed in private domestic settings.."
7. BT did not respond to this request.
8. The complainant repeated part 1 of his request on 13 January 2025.
9. BT responded to this request the following day. It apologised for having not acknowledged the previous request. However, it noted that it was not subject to either FOIA or the EIR and so was not obliged to provide any information.

## **Reasons for decision**

---

### **Would the requested information be environmental?**

10. Providing the connection status of a particular property (part 1 of the request) confirms whether that property has, at some point, been connected to a telephone network.
11. Connecting a property to the telephone network is a measure or activity that, in the short term at least, has an impact on the elements of the environment. Either a cable must be laid underground connecting the property – requiring the disturbance and removal of soil – or overhead wires must be linked to the property – altering the landscape permanently and requiring the disturbance and removal of soil in order

to erect pylons to carry the wires. Soil and landscape are two of the elements of the environment listed in regulation 2(1)(a) of the EIR.

12. For the avoidance of doubt, the Commissioner expresses no view, in this decision notice, as to whether BT does in fact hold any records relating to a connection at the property in question. However, if BT were to hold such records, they would be information on a measure or activity affecting the elements of the environment and, as such, would be environmental information.
13. Part 1 of the request therefore fell under the EIR.
14. Whilst the complainant no longer appears to be pursuing part 2 of his request, for completeness, the Commissioner does not consider that this part sought environmental information. How a telephone is installed, within a domestic property, is not a measure or activity affecting any of the elements of the environment.

### **Is BT subject to the EIR?**

15. The EIR cover any request made, to a public authority, for environmental information. The EIR define public authorities as bodies that are:
  - a) government departments; or
  - b) otherwise subject to FOIA; or
  - c) carry out functions of public administration; or
  - d) are under the control of a body falling within one of the above categories.
16. BT is not a government department and it is not subject to FOIA. Therefore the only way it could be covered by the EIR would be if it carried out functions of public administration.

### **Does BT carry out functions of public administration?**

17. In order to meet this part of the EIR definition, a body must meet four criteria:
  - It must be doing a task that the state normally does, or would otherwise do.
  - The state must have required it to do this task and there must be a statutory basis.
  - The task must have an environmental impact.

- It must have special powers, beyond those available in private law, for the purpose of carrying out the task.

### **BT's position**

18. BT's position is that it is a telecommunications company. It does not carry out state functions.
19. BT accepts that the services it provides are important to everyday life. However, other, arguably more important, services (such as food) are provided by private companies, not public authorities. The importance of BT's services to society does not make them functions of the state.
20. Any person wishing to provide a telecommunications network can apply to be registered with Ofcom. That is not the same as Ofcom (or any other part of the state) requiring that person to carry out any particular task.
21. BT accepts that the government has imposed a Universal Service Obligation on it in law (discussed in more detail below). However, it appeared to argue that this was a requirement on behalf of the Secretary of State, or Ofcom, or both, rather than BT. It noted that there was no legal requirement for BT, or any other company, to operate a telecommunications network.
22. Furthermore, BT argued that its services did not "relate to the environment." It argued that this part of the test required its services to have some form of benefit to the environment, rather than simply having an environmental impact.
23. Finally, even if it had been required to do something by law, BT argued that it had no special powers to carry out that task.
24. BT noted that, as a registered provider of a telecommunications network, it was entitled to exercise the powers set out in Schedule 3A of the Communications Act 2003 (known as the Communications Code or Code Powers).
25. However BT also noted that around 270 other registered providers were able to exercise the same Code Powers. Whilst only one of those 270 other companies is also subject to the Universal Service Obligation (the exception being KCOM – which only provides services in Kingston-upon-Hull), all are entitled to exercise Code Powers where applicable. Even though the state has required BT to do something that almost no other company is required to do, the state has given BT no extra powers in order to do it.

26. In summary BT argued it was merely carrying on a business for the benefit of its shareholders.

### **The Commissioner's view**

27. In the Commissioner's view, BT meets all the relevant criteria and is therefore a public authority for the purposes of the EIR.
28. BT was established as a public limited company in 1984. Prior to that, it was a publicly-owned company: British Telecom. British Telecom was, in turn, originally part of the Post Office.
29. The Post Office was, prior to 1969 (when it became a publicly-owned company) a government department, overseen by the Postmaster-General – a cabinet position. From 1912 onwards, the General Post Office was the monopoly supplier of the telephone service in most parts of the UK.
30. However, the state's interest in communications goes back much further than the invention of the telephone in the mid-19<sup>th</sup> century. The Postal Act of 1635 required that only persons directly authorised by the Postmaster General could carry or deliver letters. That statute was based on an earlier decree of 1609.
31. The role of Postmaster General traces its roots even further back than that. Sir Brian Tuke was appointed "Master of the Posts" in 1512, then "Governor of the King's Post" in 1517, with that title being used regularly from this point onwards. However there are records of official couriers having delivered letters for the King in the 15<sup>th</sup> century.
32. Nor is the British state an exception amongst European countries for its involvement in telecommunications. Telefónica in Spain and Deutsche Telekom in Germany, which both control large shares of their respective country's market, are, or were, state-owned (or majority state-owned) companies. For almost 100 years, France's government ran the Société Générale du Telephones, a nationalised telecommunications network.
33. Therefore the Commissioner is satisfied that telecommunications and, prior to that, communications more generally, is something that the state, both in the United Kingdom and in Europe, has historically exercised considerable control over – albeit that the UK and most European states have now liberalised their markets.
34. The Commissioner does accept that there is no law requiring BT to provide a telecommunications network. However, there is also no law requiring any specific water company to be either a water or a sewerage undertaker (or both) and it is established law that water companies are

bodies performing functions of public administration for the purposes of the EIR.

35. The Water Industry Act 1991, allows either the Secretary of State or the Water Services Regulation Authority (OFWAT) to appoint a company to be either the water or sewerage undertaker (or both) for a specific area.
36. Those companies appointed as undertakers are subject to certain statutory duties including the requirements to provide water to premises that require it and to maintain a public sewer within their designated areas.
37. Under section 33 of the Communications Act 2003, any person wishing to provide an electronic communications network must notify Ofcom that they wish to do so. Ofcom may then issue a designation specifying that that person may provide an electronic communications network. A person in receipt of a designation must also notify Ofcom of any significant changes they intend to make to their network, or if they intend to cease making it available for use. Section 35 of the same Act makes it an offence for any person to contravene section 33.
38. Section 45 of the Communications Act then allows Ofcom to impose various requirements upon providers such as requiring them to provide social tariffs or requiring them to make their infrastructure available or interoperable with the needs of other providers. Providers of public electronic communications networks are also subject to certain statutory duties such as the duty to take appropriate measures to identify, prepare for and reduce the risk of a security compromise (section 105A).
39. Providers can then also apply for a direction from Ofcom (section 106), making them subject to the Communications Code. If Ofcom issues a direction, the provider is then entitled to exercise Code Powers, but is also subject to the restrictions of the Code and of any further conditions Ofcom wishes to impose upon them.
40. Therefore, in order to construct networks to provide telephone and broadband services, a provider would need both a direction under Section 33 of the Communications Act and a designation under section 106 of the same Act. Both the direction and designation must be provided by Ofcom – an arm of the state.
41. BT has a “deemed direction” from Ofcom. It was not required to apply to join the register because it already held a licence under the Telecommunications Act 1984 and had held similar powers and functions prior to that, as the (state-owned) monopoly supplier of telecommunications.

42. Taking a purposive view, whilst the Commissioner accepts that there are differences of form between the way the Water Industry Act works and the way the Communications Act works, there are no significant differences of substance.
43. Under both regimes, a provider cannot carry out its intended activity without the permission of the state. The permission of the state does not have to be granted on request but, when it is, the provider is then subject to additional duties in law. In both cases, once the state's permission has been obtained, along with additional responsibilities, the provider is also granted additional statutory powers to assist in carrying out its duties.
44. In the Commissioner's view, the fact that the Water Industry Act requires an "appointment" and the Communications Act requires a "direction" or "designation" is a difference only of form – or perhaps even semantics.
45. Nor does the Commissioner consider that the fact each undertaker of water or sewerage (or both) then becomes the sole undertaker for that area makes a difference. This is merely a reflection of the two different industry models. Water and sewerage pipes are much larger than fibreoptic cables and it would be impractical to have multiple sewer systems serving the same area. In allowing multiple providers to operate, Ofcom is merely diversifying the risk of relying on a single provider.
46. Finally, the Commissioner also notes, for completeness, that the fact that around 270 or so other companies also have a direction from Ofcom makes no difference.
47. The Commissioner is therefore satisfied that the state, acting via Ofcom, by virtue of issuing a direction to BT (or strictly speaking, deeming it to have already received such a direction), thereby exercising its statutory powers under section 106 of the Communications Act, has entrusted BT with administrative functions. This entrustment has a basis in statute. He is satisfied that this is sufficiently similar to the process of appointment of undertakers under the Water Industry Act and that those undertakers are deemed to have been entrusted with the powers of the state.
48. Even if the Commissioner were to consider that a direction from Ofcom did not amount to entrustment, he notes that BT is subject to further requirements.



49. Section 66 of the Communications Act 2003 requires Ofcom to designate persons who will be subject to Universal Service Conditions. Ofcom has chosen BT and, in Hull, KCOM as the designated persons.
50. The Universal Service Obligation, which Ofcom has entrusted BT with, gives property owners certain rights to access high speed broadband. If a property is unable to access broadband speeds of 10Mbps or more, at a cost not exceeding £46 per month and has no prospect of being able to access one within the next 12 months, the owner can make a Universal Service Obligation request.
51. On receipt of such a request, BT must, within 30 days, verify that the property is eligible and, if it is, determine the cost of providing a connection. If the cost of that connection is under £3,400, BT must then provide a connection free of charge. If the cost exceeds £3,400, BT must still provide a connection if the person making the request is willing to pay the excess over £3,400. If the person is unwilling to pay, BT is not obliged to provide a connection.
52. BT is also subject to a Universal Service Obligation in respect of telephony. This requires it, among other things, to create and maintain an appropriate network of public call boxes across the UK.
53. BT and other telecommunication providers are also obliged to offer social tariffs to customers on low incomes.
54. The Universal Service Obligations are things that the state – acting through Ofcom – has required BT to do in law – albeit, that BT (along with KCOM and four other providers) put in a bid to be chosen as the provider of the Universal Service Obligations.
55. The Commissioner is therefore satisfied that this amounts to an additional layer of entrustment on BT.
56. The Commissioner considers that providing a telecommunications network is something that has an environmental impact.
57. Just because a particular task isn't being carried out for the benefit of the environment doesn't mean that it does not have an environmental impact.
58. In order to create and maintain a network, BT can use mobile broadband – which involves emission of radio waves. However, in practice, most connections are made by the laying of new cables – usually underground. This requires the disturbance and removal of soil – meaning it directly affects the elements of the environment.



59. The Commissioner is therefore satisfied that BT has been entrusted, by the state, with functions of the state, related to the environment and that these functions have a statutory basis. The entrustment test is thus satisfied.

### **Special powers**

60. Finally, the Commissioner turns to the question of special powers.
61. As well as having been required by the state to do something, in order to be a public authority, an organisation must also have special powers.
62. Special powers do not have to be exclusive to those carrying out tasks on behalf of the state, nor do they need to be used exclusively for the purpose of carrying out those tasks. However, they must allow the person to do something that an ordinary person could not.
63. In everyday life, people have certain rights. For example, rights of way exist across privately-owned land allowing people to enter onto that land if they wish – providing they stick to a particular route.
64. People might also give themselves additional rights when they enter into contracts with each other by granting specific rights to one or both parties to the contract. For example, a contract for the supply of goods by person A to person B will often include clauses that mean that any goods, supplied by person A, remain person A's property until person B has paid for them. Should person B fail to pay, person A could enter person B's premises to recover the goods – or they could seek a court order requiring person B to pay. Equally, person B may be able to seek a court order recovering monies it had paid to person A if the goods supplied were faulty or failed to arrive in time. The right to petition a court to enforce a contractual right is not special – it is available to anyone.
65. Special powers have to be powers that go beyond those available to ordinary people. The power to make byelaws determining what people can and cannot do within a given area, the power to search premises, or the right to compulsorily purchase land are all powers that are not available to an ordinary person.
66. The fact that multiple organisations may also possess such a power does not prevent the power from being a special power.
67. BT has accepted that, having a deemed direction from Ofcom under section 106 of the Communications Act, it is entitled to exercise Code Powers. Those powers include the right to install equipment on, over or under land – including where this obstructs access – the right to maintain such equipment and the right to enter onto private land if

necessary for such purposes. Code Powers also allow telecommunications providers to install some infrastructure without obtaining full planning permission.

68. BT has pointed out that it can only exercise these powers in agreement with the owner of the land, in that the Communications Code specifies that a Code Power should be exercised with the consent of the land owner.
69. However, Paragraphs 20 and 21 of the Communications Code allow BT (and other holders of Code Powers) to apply for a court order in the event that the land owner does not provide their consent. The court is then required to make a judgement about whether the harm to the land owner outweighs the public benefit of allowing BT to exercise its Code Powers.
70. Therefore, whilst it is technically true to say that Code Powers are exercised with the consent of the relevant land owner, the land owner will be aware that their consent cannot be withheld unreasonably. This means that some land owners will feel required to provide their consent even though they would prefer not to. Because consent cannot be withheld unreasonably, BT would also be placed in a much stronger negotiating position when determining what financial compensation, if any, the land owner should receive.
71. The Commissioner is therefore satisfied that BT has special powers, beyond those available under private law, that it can use to carry out the tasks entrusted to it by the state.
72. BT has also noted that, whilst it is required by law to provide the Universal Service Obligation, it receives no additional powers specifically in order to do this. All registered providers are entitled to exercise Code Powers, not just those subject to the Universal Service Obligation.
73. The Commissioner recognises that, were Ofcom to decide tomorrow to strip BT of its Universal Service Obligation and grant that obligation to someone else, BT would still have the same powers the following day as it does today. The company which received the Universal Service Obligation would similarly have no more powers than it does today – as the Obligation can only be imposed on a registered provider.
74. Whilst BT is correct in its assertion, the Commissioner notes that, for the reasons set out above BT has been entrusted with functions of the state by virtue of its deemed direction under section 106 of the Communications Act and that the special powers flow from that entrustment.

75. However, even if its deemed direction did not represent entrustment, it is useful to consider the overall scheme of the legislation for the provision of telecommunications and how the Universal Service Obligations fit within it. BT, as noted above, benefits from a deemed direction: rather than having to apply to Ofcom's register, being the incumbent network provider it was automatically deemed to be subject to the Communications Code and have access to Code Powers, because it possessed a licence under the Telecommunications Act 1984.<sup>1</sup>
76. In the Commissioner's view, when establishing the new regulatory scheme under the Communications Act 2003, the government would have factored BT's position and competence as a network provider into the overall operation of the scheme. BT became a designated universal service provider and entrusted to meet the public interest service obligations in the Universal Service Obligations under the new system of regulation. As it was inheriting the special powers it would need to perform that role from the licence it had previously held, there was no need to make to specific provision for BT to acquire those powers as a direct consequence of it being entrusted with the Universal Service Obligations.
77. The fact that the Code Powers do not flow directly from the Universal Service Obligations does not mean that they are not necessary for carrying out these tasks. The Communications Act recognises as such, because the Universal Service Obligations can only be imposed upon a registered provider. It is unnecessary to make separate provision for separate powers to go along with the Universal Service Obligation – because they can only be imposed upon a person who already possesses such powers.
78. BT may use its special powers for other purposes in addition to fulfilling its Universal Service Obligations, but that does not mean that those powers do not remain special. The law does not require that the special powers must only be used for fulfilling an entrusted function.
79. Nor does the fact that multiple companies (including those not subject to a Universal Service Obligation) can exercise the same powers preclude them from being special powers. The test is whether the powers are available to ordinary people – which they are not.
80. The Commissioner is therefore satisfied that BT has been tasked in law with doing something that the state normally does or might otherwise

---

<sup>1</sup> Prior to the Communications Act 2003, the Telecommunications Act of 1984 required providers of telecommunications services to be licensed, rather than merely registered.

do. That task is partially environmental in nature and BT is equipped with special powers, not normally available to ordinary citizens, allowing it to carry out this role.

81. BT therefore satisfies the tests required to be a public authority under the EIR.
82. BT has received a request for environmental information and, as a public authority, it is required to either provide the environmental information it holds or issue a refusal notice.

## **Right of appeal**

---

83. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

84. 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.
85. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**