

BERR Ref
Your Ref

Mr Peter

26 September 2008

Dear Mr [redacted]

Freedom of Information request 08/0583: Freedom of Information request of 24 July 2008 and clarified by your letter of 29 August 2008

Thank you for your letters of 24 July 2008 and the subsequent clarification to your request contained in your letter of 29 August 2008 requesting information under the Freedom of Information Act 2000.

As your letter of 29 August helpfully clarified matters for us, we have extended the search for material to include all units of British Telecom and all previous trading names of Phorm including 121 media, AdIntelligence, PeopleOnPage and ContextPlus.

As you were unable to clarify the earliest date you wished to be considered, we have considered 1 January 2005 to be the earliest date for records to be considered. We have included any correspondence from the former Department of Trade & Industry as being included in the requests where you have specifically mentioned BERR

Following a wide ranging and thorough examination of our Departmental records, we are now in a position to answer your queries.

You asked for information on the following points.

1 When were BERR first contacted by British Telecom and/or Phorm (previously known as 121 Media) to discuss the proposed use of Phorm products (such as PageSense/ProxySense/Webwise) for internet advertising?

Answer to Question 1

The first contact made by British Telecom and/or Phorm to BERR to discuss the proposed use of Phorm products (such as PageSense/ProxySense/Webwise) for internet advertising occurred on 17 April 2008.

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2 What correspondence has been exchanged concerning internet advertising using Phorm/121 Media products between BERR and British Telecom, and BERR and Phorm/121 Media since 2006?

Answer to Question 2

The one piece of correspondence is enclosed concerning any aspect of internet advertising using Phorm/121 Media products that has been exchanged between BERR and British Telecom, and BERR and Phorm/121 Media since 2006. Names of individuals have been removed in accordance with Section 40 of the Act, Personal Information. This is an absolute exemption and therefore there is no need to consider a public interest test. I can confirm all redactions in the attached information fall under this exemption.

3 Since 2005, when have BERR met with British Telecom and /or Phorm/121 media to discuss *any* aspect of internet advertising, and what were the dates, minutes and agenda of those meetings?

Answer to Question 3

Meetings between BERR and BT

Since 2005, BERR officials have met with British Telecom from time to time to discuss a wide range of topics. We have not found any record of internet advertising being discussed at these meetings

Meetings between BERR and Phorm

BERR officials met with senior management of Phorm on 24 April 2008 at which the company gave a presentation demonstrating how their technology operates.

4 When were BERR first made aware of the trials of Phorm/ 121 Media systems in 2006/2007?

Answer to Question 4

BERR were not aware of trials of Phorm/ 121 Media systems in 2006/2007.

5. What evidence have BERR sought from British Telecom concerning the secret trials of Phorm/121 media supplied systems in 2006/2007?

Answer to Question 5

BERR has not sought evidence from British Telecom concerning the secret trials of Phorm/121 media supplied systems in 2006/2007

6. When were Rt. Hon. John Hutton MP, Baroness Vadera and Gareth Thomas MP first advised that covert trails of Phorm/121 Media systems had been conducted by British Telecom in 2006/2007?

Answer to Question 6

Our records show that the Rt. Hon. John Hutton MP and Baroness Vadera were first advised that covert trails of Phorm/121 Media systems had been conducted by British Telecom in 2006/2007 on the following dates:

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John Hutton, 19 March 2008

Shriti Vadera, 14 March 2008,

Gareth Thomas was not advised because this is a communications matter which is the Ministerial responsibility of Shriti Vadera

7. Have the Insolvency Service Companies Investigation Branch been asked to open an investigation into the secret trials of Phom/121 Media systems by British Telecom in 2006/2007?

8. What evidence have the Companies Investigation Branch sought concerning the secret trials of Phorm/121 Media systems by British Telecom in 2006/2007?

Answer to both Questions 7 and 8

Following careful consideration of your request it has been decided that the duty to confirm or deny whether this information is held does not arise. In adopting this approach we place reliance on the exemptions in sections 30(1)(b) and 43(2) of FOIA. How these exemptions apply are explained below.

Section 30

Section 30(1)(b) exempts information if it has at any time been held by the authority for the purposes of any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct. Section 30(3) provides that the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information under section 30(1).

Representatives of CIB are empowered by section 447(3) of the Companies Act 1985 to investigate companies where, following a vetting exercise, it is considered that a good reason exists to do so. One of the possible outcomes of such an investigation is that where suspected criminal conduct is uncovered the matter will be referred to the Department's in-house prosecutors for proceedings to be commenced. Although this happens in only a small proportion of cases, because of the initial prospect of criminal proceedings arising from a s.447(3) investigation, section 30(1)(b) of FOIA is engaged. It follows that section 30(3) applies, meaning that there is no duty to confirm or deny the existence of an investigation.

Section 43

We are also relying on section 43(2) which states that information is exempt if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Section 43(3) provides that the duty to confirm or deny does not arise if, or to the extent that it would, or would be likely to, prejudice the interests in section 43(2).

We consider that knowledge of the existence of an investigation might well be prejudicial to the commercial interests of either the company itself or those individuals associated with it. Confirming an investigation rightly or wrongly creates a stigma against those involved and is

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not something that should be made public. Conversely, denying that a particular company is the subject of investigation creates an inference that in other cases (where the Department may choose to neither confirm or deny) an investigation has taken place. If, by answering in the negative about a particular company, this reveals that other companies have been investigated we consider that revelation of that fact would, or would be likely to prejudice the commercial interests of those other companies or individuals involved.

Public Interest

We have considered the public interest in relying on both of these exemptions. It is accepted that there is a public interest in ensuring that investigations are pursued effectively and in an accountable manner. Public confidence in such investigations can be served by increasing their transparency. However, that confidence also requires that the processes themselves should be effective for the delivery of justice. CIB conduct confidential investigations. They rely on the cooperation of those being investigated to ensure they gather all of the relevant information. Experience has shown that such cooperation is often enhanced by knowledge that all aspects of the process are strictly confidential. CIB also rely heavily on information voluntarily disclosed from third parties and consider any threat to the confidentiality of the investigatory process may inhibit such sources. We have also taken into account the prejudice that may be caused to companies and those associated with them if we were to make public whether they have been investigated. We do not consider this to be in the public interest. We take the view that the public interest comes down in favour of not disclosing whether a particular company (or any individual associated with it) is or was the subject of an investigation.

Yours sincerely



PP Patrick Balchin
Policy Advisor
Business Relations
Communications and Content Industries

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Appeals procedure

If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this letter. If you wish to request an internal review please contact me.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

[REDACTED]

From: [REDACTED]
Sent: 16 July 2008 14:23
To: Gillatt Debbie (BR2)
Cc: [REDACTED]
Subject: FW: Phorm

Debbie,

FYI

[REDACTED]

From: [REDACTED]
Sent: 16 July 2008 14:23
To: [REDACTED]
Subject: Phorm

[REDACTED]

I was wondering whether you could let me know whether BT's trial of Phorm is still pending, or whether it is now live, as we have received some queries about this.

Many thanks,

[REDACTED]