

Mr Peter [REDACTED]  
[REDACTED]

Our Ref: CMS 1 [REDACTED]



e-mail: [REDACTED]

8th May 2009

department  
culture, media  
and sport

Dear Mr [REDACTED]

### Your Request for Information

Thank you for your letter of 29<sup>th</sup> January 2009 which we received on 3<sup>rd</sup> February 2009 requesting the following information:

1. *Please disclose correspondence exchanged since 1<sup>st</sup> January 2008 between the DCMS and BERR, DCMS and Home Office, DCMS and Cabinet Office, and DCMS and Information Commissioner concerning the covert trials of Phorm/ 121Media systems conducted by British Telecom in 2006/2007.*
2. *When were DCMS first contacted by BT/ Phorm/ 121Media to discuss internet advertising?*
3. *What correspondence (email, letter, fax) has been exchanged concerning internet advertising between DCMS and BT, and DCMS and Phorm/ 121Media since 2006?*
4. *When have DCMS met with BT/ Phorm to discuss internet advertising, what were the dates, minute and agenda of those meetings?*
5. *When were DCMS made aware of the trials of Phorm/ 121Media systems in 2006/2007?*
6. *What evidence has DCMS sought from BT concerning the secret trials on 2006/2007*
7. *When were DCMS Ministers first advised that covert trials of Phorm/ 121Media systems had been conducted in 2006/2007?*

I am dealing with your request under the Freedom of Information Act 2000 ('the Act'). The Act gives you the right to:

- know whether we hold the information specified in your request and, if that is the case,
- to have that information communicated to you, subject to the provisions of the Act.

I will deal with each of your questions in turn, but I should first point out that DCMS has joint responsibility with BERR for the publication of the Digital Britain Report and that Lord Carter has held a joint ministerial portfolio at both DCMS and BERR since 3 October 2008. In relation to your request for information, I am dealing only with information held by DCMS.

### Question 1

DCMS holds two documents that fall within the scope of your request. They were both provided to DCMS by BERR. One is a copy of a letter to the European Commission and the other is a copy of a Ministerial briefing note.

The information in both of these documents is being withheld because it is exempt under section 27(1)(b) of the Freedom of Information Act 2000 and the public interest in maintaining this exemption outweighs the public interest in disclosure.

Section 27(1)(b) of the Act exempts information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any international organisation, or any organ of such an organisation, which would include the European Commission. We have concluded that this exemption applies here because the information contained in these documents is of a nature that would, or would be likely to, prejudice relations between the United Kingdom and the European Commission.

Section 27(1) is a qualified exemption. This means that even if the information requested is exempt, the public authority must decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure. In undertaking this balancing exercise, I have taken into account that there is a public interest in understanding the way in which the Government interacts with the European Commission. Greater transparency of the decision-making process allows for greater accountability of Government to the public, increases trust and understanding, and maintains public confidence in officials. There is also a public interest in giving the public access to information on topics likely to be of interest and allowing them to assess the quality of advice being given to ministers and the subsequent decision-making.

Balanced against these considerations is the level of prejudice which the release of this information would cause to relations between the United Kingdom and the European Commission. It is very much in the public interest that the UK Government can take account of the views of the European Commission in its continuing policy discussions and that this is not inhibited by the premature release of these views. If correspondence, or briefings, were less candid in the future, their value would be reduced and the policy formulation process would be less informed.

Furthermore, the information contained in these two documents relates to ongoing communications with an international organisation. The UK's international relations and its ability to promote and protect its interest abroad would be compromised if this information was made public at this stage. It is also important to take account of the context in which this correspondence arises. The process by which the European Commission corresponds with its member states is a bilateral iterative process in which the European Commission is able to express any concern it has about the implementation of European law in the State, and the Member State is able to set out, in an equally free and frank manner, its views on the points raised by the Commission. The issues that are raised at the beginning of this process can often be quite different from those issues (if any) which are eventually part of the subsequent negotiations.

It is important to the UK to have maximum flexibility in such negotiations with the Commission as might take place, and for information about the negotiations to be released into the public domain would be prejudicial to both the United Kingdom's position and extent to which the European Commission is able to investigate and ascertain whether any further proceedings are in fact necessary, which is ultimately in the interest of ensuring that EU law is properly implemented.

In the consideration of the above points, the Department has determined that the public interest in favour of maintaining the exemption outweighs the public interest in disclosure.

**Question 2**

We hold no records to show that DCMS was contacted by BT/Phorm/121Media to discuss internet advertising.

**Question 3**

We hold no records to show that correspondence has been exchanged between DCMS and BT, and DCMS and Phorm/ 121Media since 2006.

**Question 4**

We hold no records to show meetings took place between BT/ Phorm to discuss internet advertising.

**Question 5**

DCMS were made aware of the trials of Phorm/ 121Media through the attached BT Public Affairs briefing which is available in the public domain:

<http://www.btplc.com/Thegroup/RegulatoryandPublicaffairs/EuropeanAffairs/Briefings/NetworksandBroadband/BTandPhorm040408.pdf>

**Question 6**

DCMS has not sought evidence from BT of any such trials.

**Question 7**

We have no record of DCMS Ministers being given specific advice at the time about trials of Phorm/121 Media.

If you need any help or advice or have any questions about this letter, please contact me. Please quote the above reference number in any communications.

If you are unhappy with the way DCMS has handled your request you are entitled to ask for an internal review of its handling within two calendar months of the date of this letter. If you wish to make a complaint you should contact: FOI Central Team, Public Engagement and Recognition Unit, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH

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.

Yours sincerely,



Caroline Osborne-James  
Freedom of Information Team  
Public Engagement and Recognition Unit