

Reference: 01444170

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Information Rights
information.requests@ofcom.org.uk

21 June 2022

Freedom of Information request: Right to know request

Thank you for your request for information concerning a meeting between Ofcom and the Equality and Human Rights Commission (the 'EHRC').

Your request was received on 13 April 2022 and we have considered it under the Freedom of Information Act 2000 (the "Act"). We wrote to you on 13 May 2022 to say we needed more time to consider the public interest in withholding or disclosing the information requested. We have now concluded that consideration.

Your request

We have numbered your questions for ease of reference.

"In Feb 2022, Ofcom CEO Melanie Dawes met with Marcial Boo, CEO of the EHRC.

Please provide the following information :

- 1. Date & Time of the meeting*
- 2. Subject of the meeting*
- 3. Copies of any meeting notes made as a result of the meeting*
- 4. Copies of any and all briefing documents provided to Melanie Dawes prior to or as part of the meeting*
- 5. Copies of any email communications between Melanie Dawes or her representative / Ofcoms representative and Marical Boo / his representative / EHRCs representative between Jan 2022 to Date*

Please also provide :

- 6. Whether any subsequent meetings have been arranged or held between Melanie Dawes / her representative / OFCOM representative & Marical Boo / representative / EHRC representative*
- 7. Date / Time they have been arranged for or held*
- 8. Subject of any subsequent meetings*
- 9. Copies of any meeting notes or briefing documents in relation to these meetings.*

Background

The EHRC requested an introductory meeting to focus on the Online Safety Bill ('OSB'), discussing how we may start engagement and ensure protection of rights are taken account of in the legislation and the regime. The main topics were what the OSB was covering and how the EHRC could best engage with Ofcom as the OSB progresses.

Marcial Boo, CEO of the EHRC was in attendance, along with a Policy Principal and a Director in Policy and Human Rights Monitoring from EHRC. Other attendees included an Online Safety Director, and two Online Safety Policy Managers from Ofcom.

Our response

We answer your questions in turn below.

1. Date & Time of the meeting

17 February 2022 at 9:00.

2. Subject of the meeting

Introductory meeting with Dame Melanie Dawes, CEO of Ofcom and Marcial Boo, CEO of EHRC.

3. Copies of any meeting notes made as a result of the meeting

4. Copies of any and all briefing documents provided to Melanie Dawes prior to or as part of the meeting

We can confirm that we do hold correspondence falling within the scope of question 3 and 4.

However, this information is being withheld as we consider its disclosure is exempt under section 36 of the Act. In particular, section 36(2)(b)(ii) and (c) of the Act provides that information held by a public authority is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure of the information:

- would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, and
- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. I have attached a letter from the qualified person for Ofcom (the Corporation Secretary) confirming that this exemption applies to the correspondence falling within the scope of your request (see Annex A) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B).

Some of the information captured by the request contains personal information. We consider that this information is exempt from disclosure under Section 40(2) of the Act, which provides that personal information about persons other than the requester is exempt where, among other things, its disclosure would contravene any of the data protection principles in the UK General Data Protection Regulation and the Data Protection Act 2018. Section 40 is an absolute exemption under the Act and does not require a public interest test.

5. Copies of any email communications between Melanie Dawes or her representative / Ofcoms representative and Marical Boo / his representative / EHRCs representative between Jan 2022 to Date

We have attached some of the email communications falling within the scope of your request. These relate to meeting arrangements. We have redacted any personal information from the emails as we consider this information is exempt from disclosure under section 40(2) of the Act, which we set out under point 4 above.

We consider that some of the emails within scope of the request are exempt from disclosure under section 36 of the Act and therefore we have withheld disclosure of these. In particular, under section 36(2)(b)(ii) and (c) of the Act which we have set out above.

6. *Whether any subsequent meetings have been arranged or held between Melanie Dawes / her representative / OFCOM representative & Marical Boo / representative / EHRC representative*

7. *Date / Time they have been arranged for or held*

A meeting took place between colleagues and members of staff of EHRC on 25 March 2022 at 15:00 to 15:30.

8. *Subject of any subsequent meetings*

It was a half hour meeting to explore at a more working level how the EHRC might be able to support Ofcom with specific expertise and matters relating to the OSB. The main topics were what the OSB was covering and how the EHRC could best engage with Ofcom as the Bill progresses.

9. *Copies of any meeting notes or briefing documents in relation to these meetings.*

We can confirm that we do hold correspondence falling within the scope of your request.

However, this information is being withheld as we consider its disclosure is exempt under sections 36 and 40 of the Act, as under question 4 and 5 above.

I hope this information is helpful. If you have any further queries, then please send them to information.requests@ofcom.org.uk quoting the reference number above in any future communications.

Yours sincerely

Julia Snape

Annex A

Freedom of Information: Right to know request

Section 36 exemption

The information we hold that falls within the scope of your request is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act 2000 (the Act). I am a "qualified person" as referred to section 36(2) of the Act and duly authorised by a Minister of the Crown for the purposes of that section.

In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, and would otherwise, or would be likely otherwise to, prejudice the effective conduct of public affairs. In applying this exemption, I have had to balance the public interest in withholding the information against the public interest in disclosing the information.

I have set out in Annex B the exemption in full, as well as the factors I considered when deciding where the public interest lay in relation to the information concerned.

If you have any queries about this letter, please contact information.requests@ofcom.org.uk.

Signed: Veronica Branton

Date: 21 June 2022

Corporation Secretary

Section 36: Prejudice to effective conduct of public affairs

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation, or
- otherwise prejudice the effective conduct of public affairs.

Key points:

- Section 36 can only be used if, in the reasonable view of a "qualified person", disclosure of the requested information would have one of the specified effects.
- In this case, it is considered that disclosure would:
 - inhibit the free and frank exchange of views for the purposes of deliberation, and
 - otherwise prejudice the effective conduct of public affairs.
- The application of section 36 is subject to a public interest balancing test.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Transparency of Ofcom’s engagement with external stakeholders on issues such as those relevant to diversity and inclusion. This may lead to greater awareness of how Ofcom works as a regulator and how it performs its duties. • The general desirability that Ofcom’s activities as the UK’s communications regulator are transparent. 	<ul style="list-style-type: none"> • Ofcom’s Chief Executive needs to be able to engage with the chief executives of external organisations, including EHRC, in an informal manner, to discuss matters at a high level inside and outside the scope of regulatory action. This type of engagement allows the Chief Executive to build relationships with all types of stakeholders. The threat of disclosure of information from these types of engagement would likely discourage the building of such relationships and would therefore have an adverse effect on Ofcom’s ability to effectively carry out its functions. • In order to run the organisation effectively, Ofcom’s Chief Executive needs to be able to communicate and internally discuss the results of her engagement with organisations such as EHRC. The threat of disclosure of this internal correspondence would substantively inhibit the Chief Executive’s ability to perform her role effectively in future.

	<ul style="list-style-type: none"> • In general, there is a public interest in allowing Ofcom colleagues to engage in discussions with stakeholders during the formulation of policy or as part of its work, in this case, for the purposes of assisting DCMS in the preparation of the OSB. • Releasing such information to the public about these discussions, would not only inhibit the free and frank exchange of views internally and externally, but would also likely inhibit Ofcom’s ability to work in a collaborative way in the future with external stakeholders, including other public bodies. • The correspondence and documents requested contain information that may be subject to change to reflect further internal deliberation or amendments. The disclosure of these documents containing working level views could affect Ofcom’s ability to effectively deliberate on and discuss its work/views before it is finalised, and thus prejudice the effective conduct of both Ofcom’s and stakeholders’ affairs. Disclosure of material that does not represent the final agreed position could be misleading and would not be in the public interest.
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Reasons why the public interest favours withholding information

<ul style="list-style-type: none"> • We consider that, on balance, the public interest in withholding disclosure of this information outweighs the public interest in disclosure. • Ofcom, as the communications regulator and forthcoming Online Safety regulator, needs to freely engage with other public bodies where appropriate, to share views and expertise on matters relating to the development of relevant policy or legislation. We consider that on balance the importance of transparency on these matters is outweighed in this case by the need for Ofcom and public bodies to effectively engage on matters of public policy, and therefore disclosure would be contrary to the public interest. • Ofcom’s Chief Executive and other Ofcom colleagues need to have the ability to form stakeholder relationships, and to freely communicate the results of such engagements internally. Disclosure would likely result in the Chief Executive/Ofcom colleagues and the organisations with which they engage being less open to sharing views and engaging in valuable, informal discussions.

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law, you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for responding to internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact information.requests@ofcom.org.uk

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. Further information about this, and the internal review process can be found on the Information Commissioner's Office [here](#). Alternatively, the Information Commissioner can be contacted at:

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