

Reference: 01423702

Zach Westbrook
Information Rights Advisor
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17 March 2022

Freedom of Information request: Right to know request

Thank you for your request for information concerning correspondence between Ofcom and Peak Radio Derbyshire regarding a broadcast on Wednesday 1 September 2021. Your request was received on 22 February 2022 and we have considered it under the Freedom of Information Act 2000 (“the FOI Act”).

Your request

You asked for:

Correspondence between Ofcom and Peak Radio Derbyshire with regards to a radio program aired by Presenter Sophie Duncan, on DAB between 7.30pm - 8pm on Wednesday 1st September. [REDACTED]

I am requesting for any and all correspondence between both parties since 1st September and 30th December 2021.

Background

We received one complaint in relation to the above programme alleging the broadcast of offensive language. We carefully considered the complaint we received against the relevant rules of the [Broadcasting Code](#) in line with our published [Procedures for investigating breaches of content standards for television and radio](#). Our assessment was that the programme did not raise any potentially substantive issues warranting investigation by Ofcom. We therefore decided not to pursue the complaint and the outcome of our decision was published in our [Broadcast and On Demand Bulletin](#) (issue 440, 6 December 2021). You can find this information in the “complaints assessed, not pursued” section of our Bulletin Hub by filtering for service name and Bulletin Issue. We also notified the station of that outcome on 23 November 2021.

Our response

I can confirm that we do hold a copy of correspondence in scope of your request, however, we are unable to provide this as this information is exempt from disclosure under section 44 of the FOI Act. In particular, section 44(1)(a) of the FOI Act exempts the disclosure of information if its disclosure is

prohibited by or under another enactment. Section 393 of the Communications Act 2003 prohibits Ofcom from disclosing information which relates to a business (in this case, Peak Radio Derbyshire) which we have obtained in the course of exercising our functions in relation to broadcast standards, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Communications Act 2003 is met, neither of which applies here. Section 44 is an absolute exemption and does not require a public interest test.

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

Zach Westbrook

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