

Reference: 01412736

Eleanor Scott  
Information Rights Advisor  
[Information.requests@ofcom.org.uk](mailto:Information.requests@ofcom.org.uk)

9 March 2022

## Freedom of Information: Right to know request

Thank you for your request for information in relation to the Online Safety regime. We received this request on 27 January 2022 and have considered it under the Freedom of Information Act 2000 (the Act).

You asked:

*Please may I request any draft or final project plans relating to the implementation of the Online Safety regime once the Bill has achieved Royal Assent. I appreciate this starting date is not certain, but Ofcom should have developed a plan based on assumptions about both this date and how long it may then take the Secretary of State to determine the list of 'Primary Priority Content' and 'Priority Content' and secure approval of secondary legislation. Ofcom's plan is likely to include the steps and time Ofcom then takes to develop codes of conduct and other guidance, including any calls for evidence and consultation periods, as well as approvals by the Secretary of State and Parliament, and then its enforcement phases from monitoring through to enforcement action.*

### Background

Our draft [Plan of Work for 2022/23](#) set out the five areas we will be focussing on this year in advance of gaining our proposed new Online Safety powers, including developing our regulatory approach. We explained, in that context, that we would aim to consult publicly on a range of matters to implement the online safety regime, including our codes of practice specifying how platforms can comply with their new duties, as soon as possible after the Online Safety Bill has passed. We also set out the other initiatives related to online safety that we will be undertaking in 2022/23.

As explained in our draft Plan of Work, we intend to publish further details of our plans to implement online safety regulation later this year after Government has introduced the Online Safety Bill into parliament.

## Our response

Turning to your request, we can confirm that we do not have “final project plans” relating to the implementation of the Online Safety regime. We do hold information on draft plans for implementing the Online safety regime. 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 (see Annex A) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B).

You may find it useful to refer to either the [Draft Online Safety Bill](#) or the [Memorandum from the Department of Digital, Culture, Media and Sport and the Home Office to the Delegated Powers and Regulatory Reform Committee](#). Ofcom has also published certain correspondence about the Online Safety Bill in connection with the pre-legislative scrutiny of the draft Bill by the Joint Committee, which is available [here](#). This included a [follow-up note](#) for the Joint Committee in which Ofcom responded on certain questions about timing for implementation of the regime.

If you have any queries, then please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk). Please remember to quote the reference number above in any future communications.

Yours sincerely,

Eleanor Scott

## 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](mailto:information.requests@ofcom.org.uk).

Signed 

Date: 8 March 2022

Corporation Secretary

**Annex B**

<b>Section 36: Prejudice to effective conduct of public affairs</b>	
<p>Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:</p> <ul style="list-style-type: none"> <li>• inhibit the free and frank provision of advice,</li> <li>• inhibit the free and frank exchange of views for the purposes of deliberation; or</li> <li>• prejudice the effective conduct of public affairs.</li> </ul> <p><b>Key points:</b></p> <ul style="list-style-type: none"> <li>• Section 36 can only be used if, in the <b>reasonable view of a "qualified person"</b>, disclosure of the requested information would have one of the specified effects.</li> <li>• In this case, we consider the 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.</li> <li>• The application of section 36 is subject to a public interest balance.</li> </ul>	
<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"> <li>• Ofcom recognises that the Online Safety regulatory regime and the timing of its implementation is a matter of interest to the wider public. Releasing such information could be said to increase transparency in our work and allow for discussion in a public forum.</li> </ul>	<ul style="list-style-type: none"> <li>• Any draft project plans on the implementation of the Online Safety regime that Ofcom has developed for internal purposes are subject to change, both to reflect external factors such as changes to the Online Safety Bill but also to reflect further internal deliberation. The disclosure of these documents containing working level plans/proposals could have a chilling effect on Ofcom’s ability to effectively deliberate on and discuss such plans before they are finalised, and thus prejudice the effective conduct of Ofcom’s planning for the implementation of the new online safety regime.</li> </ul> <p>Moreover, to the extent that Ofcom has developed draft timelines relating to the implementation of the Online Safety regime for the purposes of discussions with DCMS about the Online Safety Bill, these are also subject to change (for example, as a result of any further amendments to the Bill which could impact on the timing of implementation) and</p>

	<p>are based on information shared with us by DCMS on a confidential basis about internal Government planning for implementation and potential changes to the Bill (which remains confidential). Ofcom needs to be able to engage in open discussions with DCMS about the Online Safety Bill, its role as the new online safety regulator and its working plans for implementation. Releasing this information to the public would not only inhibit the free and frank exchange of views internally and externally with DCMS, but could impact Ofcom's working relationship with DCMS and in turn affect Ofcom's ability to provide quality input to Government regarding the Online Safety legislation. This would prejudice the effective conduct of Ofcom's forthcoming role as online safety regulator as well as Ofcom's role more generally as the communications regulator.</p>
--	--

**Reasons why public interest favours withholding information**

- At this stage, Ofcom is withholding the requested information. As outlined previously in this response, further details of our plans on implementing the Online Safety Bill will be published at an appropriate stage later this year. The public interest test has been applied on the basis of disclosing draft project plans now. We consider that the public interest in withholding outweighs the public interest in disclosure.
- This is because disclosure of this information is likely to prejudice the effective conduct of public affairs, as it would have a chilling effect on Ofcom's employees' ability to freely effectively deliberate on and discuss such draft and working level project plans before they are finalised. It could also inadvertently disclose confidential information provided to Ofcom by DCMS and inhibit Ofcom's ability to engage in free discussions with Government regarding the development of the online safety regime.
- Therefore, on balance, we consider that the importance of transparency on these matters is outweighed in this case by the need for Ofcom to effectively formulate and engage with Government on matters of public policy, and therefore disclosure would be contrary to the public interest.

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](mailto: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