

Reference: 01513042

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16 November 2022

### Freedom of Information: Right to know request

Thank you for your request for information relating to internal complaints or concerns by staff about Ofcom's engagement with the LGB Alliance. We received this request on 3 October 2022 and have considered it under the Freedom of Information Act 2000 (the 'FOI Act'). We contacted you on 31 October 2022 to say we needed more time to consider the public interest in disclosing or withholding the information. We have now concluded that consideration.

### Background

Ofcom is the UK's communications regulator. It exercises this regulatory role in light of statutory duties, functions and powers given to it by Parliament. In fulfilling this role, Ofcom engages with a wide range of stakeholders with interests in the sectors which it regulates.

You asked:

*For the dates between Jan 2021 to date:*

*Please provide copies of any internal correspondence or meeting notes or documentation in relation to any internal complaints or concerns raised by individual staff or staff groups about Ofcom's known regular engagement with the group known as LGB Alliance, or any representative of this group.*

We have conducted searches for information that Ofcom holds within the scope of your request and confirm that we hold some emails from Ofcom individuals to senior staff expressing concerns regarding Ofcom contact with the LGB Alliance, with whom Ofcom staff have occasionally met in the exercise of Ofcom's regulatory functions.

We consider these documents are exempt from disclosure under section 36 of the FOI Act. Section 36 is a qualified exemption, which means that Ofcom is required to consider whether or not the public interest in disclosing the information you have requested outweighs the public interest in withholding the information for the reasons set out in Annex B to this letter. In Annex A to this letter, Ofcom's Corporation Secretary confirms that the exemption is engaged.

We also note in this context that employee forums have no role in influencing or determining how Ofcom exercises its statutory functions as a regulator. This position was communicated clearly to the relevant people in this instance.

Information captured by the request also contains the names and personal views of a number of Ofcom colleagues. We consider that the information is therefore also exempt under Section 40(2) of

the FOI Act which provides that personal information about persons other than the requester is exempt where 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 FOI Act and does not require a public interest test.

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,

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(2) 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. The limbs of section 36 that apply here are:

- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
  - (b) would, or would be likely to, inhibit—
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

In my reasonable opinion, disclosure of the information requested would prejudice, or would be likely to prejudice, the effective conduct of public affairs.

Set out in Annex B is the exemption in full, as well as the factors that were considered when deciding where the public interest lay in relation to the information concerned.

If you have any queries about his letter, please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk).

Signed: Veronica Branton

Date: 16 November 2022

## Annex B

### 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 prejudice the effective conduct of public affairs.
- The application of section 36 is subject to a public interest balance.

| <b>Factors for disclosure</b>   | <b>Factors for withholding</b>   |
|---|--|
| <ul style="list-style-type: none"><li>• The general desirability that Ofcom's activities as the UK's communications regulator and employer are transparent.</li></ul> | <ul style="list-style-type: none"><li>• The information concerned relates to internal dialogue on certain specific internal diversity and equality issues. In order to run the organisation effectively, the management of Ofcom needs to be able to communicate openly with colleagues to be able to discuss issues without threat of disclosure. Colleagues need to be able to feel free to express their personal views so that these can be heard by management and action taken where required.</li></ul> |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• In publishing annual reports on its Diversity and Inclusion programme, Ofcom meets requirements of transparency in relation to its internal policies and strategies relating to diversity issues.</li> </ul> |
| <p><b>Reasons why public interest favours withholding information</b></p>   |   |
| <ul style="list-style-type: none"> <li>• We consider that the public interest in disclosure of correspondence is outweighed by the need for Ofcom to run its affairs as an organisation.</li> <li>• The principal public interest in this area is in understanding Ofcom’s position as a regulator. That position has been disclosed. The remainder of the information concerns the views expressed by colleagues not involved in a regulatory process. <ul style="list-style-type: none"> <li>• The disclosure of the requested information would therefore not further the public interest but rather, would prejudice the management of the organisation.</li> <li>• It would have a detriment on Ofcom’s ability to operate internally as an organisation and meet its obligations as an employer.</li> </ul> </li> <li>• We have already disclosed information in relation to exchanges between Ofcom and LGB Alliance in an FOI response which you can find here (under 2022 Corporate – Correspondence and Meetings with LGB Alliance): <a href="#">Published responses to FOI requests - Ofcom</a></li> </ul> |   |

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. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire

SK9 5AF