

Reference: 01525219

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24 November 2022

Freedom of Information request: Right to know request

Thank you for your request for information concerning whistleblowing. Your request was received on 31 October 2022 and we have considered it under the Freedom of Information Act 2000 (the FOI Act).

Your request & our response

1. *When a whistle-blower comes forward, what criteria do you use to assess whether their disclosure is in the public interest and relevant to your area?*

We describe how we assess whistleblower disclosures on our web site [Whistleblowing: Making a protected disclosure to Ofcom - Ofcom](#).

The relevant text is as follows:

“What happens next

We will assign a case officer to review the information you have provided. They will make an initial assessment of whether or not Ofcom should investigate further, in line with our [Enforcement Guidelines \(PDF, 1.6 MB\)](#). If you have provided your contact details, they may get in touch with you to find out more about the allegations.

There are a range of possible outcomes. We may:

- ***seek to gather further information*** before reaching a decision on whether to investigate. *This may involve contacting the organisation that is the subject of the allegations. We would not disclose your identity or contact details without your consent.*
- ***decide to open an investigation***. *We would follow the normal procedures set out in our Enforcement Guidelines, which include publishing an opening notification on our website.*
- ***address the allegations without opening a formal investigation***. *This may involve writing to the organisation or individual to remind them of any relevant regulatory requirements.*
- ***pass your information to a more appropriate regulator***, for example if the behaviour relates to a sector Ofcom doesn't regulate.

- **decide not to investigate further.** We are not legally required to investigate every disclosure received. When deciding whether or not to investigate, we consider how well we are using the resources at our disposal to protect the public interest.

If you provide your contact details, we will normally tell you what we have decided to do with your information.”

Ofcom is one of the “prescribed persons” that individuals can blow the whistle to rather than their employer. As explained in this [Government guidance](#), one can report to Ofcom matters relating to:

- the provision of electronic communications networks and services
- broadcasting and the provision of radio and TV services
- media ownership and control
- competition in communication markets

If the disclosure is not about the matters mentioned above, we consider whether it is about another area that Ofcom regulates, e.g. postal services. If it meets this criterion, we will then accept the disclosure as a ‘wider disclosure’. If the disclosure is outside of Ofcom’s scope, we will refer the matter to the appropriate prescribed person to deal.

*2. For the year 2019-20 what were your whistleblowing statistics?**

In your annual report for that year, the statistics included were those for 2018-19 not 2019-2020

** amount who made a disclosure*

The 2019/20 statistics appear in the [The Office of Communications Annual Report and Accounts for the period 1 April 2020 to 31 March 2021](#). The actual wording in the report is as follows: ‘During 2020/21 Ofcom did not receive any disclosures under the Public Interest Disclosure Act 1998 or otherwise.’

i. those who had successful disclosures

There were no successful disclosures.

ii. those who led to you taking further action

There were no disclosures where further action was taken.

** what categories of action did you take*

As there were no cases, no categories were used. However, in our [Annual whistleblowing report 2021-22](#) we categorised the whistleblower disclosures by industry sector – Broadcasting, Spectrum and Telecoms, as well as Postal and Video-sharing platforms for wider disclosures.

Do you manage a whistle-blower's expectations when you receive a protected disclosure and how?

We acknowledge receipt of a disclosure with the whistleblower. At this stage we will provide assurance, as far we are able, in terms of protecting their identity, although there is always a risk that any questioning of an organisation could lead to their identity being made known. We also inform the whistleblower that it is not within Ofcom’s gift to provide any assurance that their disclosure is protected under the Public Interest Disclosure Act, as only a court can decide on that. We may ask whistleblowers for further details and evidence, but at this stage we also inform them

that we will not be able to share any information with them on the potential progress of any enquiries we may undertake in relation to the disclosure.

What support and/or advice do you provide whistle-blowers with - in terms of the difficulty of making a disclosure and its potential repercussions - when they come to you?

In our whistleblowing website we have a section called Protection for whistleblowers, where we provide advice to potential whistleblowers ([Whistleblowing: Making a protected disclosure to Ofcom - Ofcom](#)). The relevant text is as follows:

“Protection for whistleblowers

You may have questions or concerns about what protection is offered to whistleblowers. We cannot offer you legal advice, but there are other sources of support, such as:

- [Protect](#), the whistleblowing charity
- [ACAS](#)
- [Citizens Advice](#)
- Your trade union

Whistleblowers are protected under the Public Interest Disclosure Act (PIDA). This provides a possible remedy if you are hurt, suffer detriment or are dismissed because you have blown the whistle in the public interest. This is enforceable through an Employment Tribunal.

Ofcom has a special role as a ‘prescribed person’ under PIDA, such that making a disclosure to us could potentially qualify you for the same employment rights as if you had made a report directly to your employer. There are specific criteria that must be met for the protection to apply, including having a reasonable belief that the information reported is substantially true. This is laid out in [government guidance](#).

Ofcom cannot determine whether your disclosure qualifies for protection or intervene in employment relations. You should seek advice from one of the bodies mentioned above if you are concerned.

We will treat any information you give us sensitively and responsibly. We will restrict knowledge of your identity within Ofcom to a minimum necessary to assess and investigate the matter. If we publish anything related to a whistleblower case we would not reveal the identity of the whistleblower, and we would not divulge that information unless we were legally obliged to do so, for example by a judge in a court of law. But even if we do our utmost to protect a whistleblower’s identity, we cannot guarantee anonymity, as an employer may independently identify a whistleblower.”

2. Where whistleblowing disclosures are deemed qualified and successfully taken to an employment tribunal - what types of action do you take on the companies involved in your remit?

We describe how we deal with whistleblower disclosures in the section What happens next, on our web site [Whistleblowing: Making a protected disclosure to Ofcom](#). Also see our answer for question 1 above.

What guidance do you provide to the companies you regulate regarding their personal whistleblowing policies?

We do not provide separate guidance to the companies we regulate regarding their personal whistleblowing policies. If we suspected that a companies whistleblowing policies were insufficient then we would deal with them on a case by case basis.

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

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