

Reference: 01491960

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03 October 2022

## Freedom of Information: Right to know request

Thank you for your request for information about contact and communications between Ofcom and Sir Nicholas Clegg since the start of January 2021. We received this request on 5 August 2022 and have considered it under the Freedom of Information Act 2000 (the “FOI Act”). We wrote to you on 5 September 2022 to say we needed more time to consider the public interest in withholding or disclosing the information. We have now concluded that consideration.

### Your request

You asked:

*1...Since 1 January 2021 has Sir Nicholas written to and or communicated with Ofcom. Please note that I am interested in all correspondence and communication irrespective of the subject under discussion. If the answer is yes, can you, please provide a copy of this correspondence and communication.*

*2...Since 1 January 2021 has Ofcom written to and or communicated with Sir Nicholas Clegg. Please note that I am interested in all correspondence and communication irrespective of the subject matter under discussion. If the answer is yes, can you, please provide a copy of this correspondence and communication.*

*3...Since 1 January 2021 has Sir Nicholas Clegg met with representatives and or employees of Ofcom. If the answer is yes, can you, please provide the following details. In the case of each meeting can you please provide the date, time, and venue. In the case of each meeting can you please provide a full list of those present. In the case of each meeting did either side produce a formal or informal/draft agenda. If the answer is yes, can you, please provide a copy of this agenda. In the case of each meeting can you provide a list of topics under discussion. If briefing material was produced for any Ofcom representative/employee at the meeting (s) can you, please provide a copy of this briefing material. Please do not include details of any chance or accidental or unplanned encounters at social events.*

*4...Has Ofcom destroyed any correspondence and communication relevant to this request? If the answer is yes, can you state what information was destroyed, when and why. In the case*

*of any correspondence and communication destroyed can you identify the authors and recipients of that correspondence and communication. Can you state when the destroyed correspondence and communication was first generated. If destroyed correspondence and communication continues to be held in another form, can you, please provide a copy of that destroyed correspondence and communication.*

## Our response

I can confirm Ofcom holds information in scope of your request. The responses to each question are detailed below:

1. Annex 1 contains all correspondence between Sir Nicholas Clegg and Ofcom from 1 January 2021 to the date of this request.
2. See answer to question 1.
3. Please see the table below which presents a record of the meetings held between Sir Nicholas Clegg and representatives of Ofcom from 1 January 2021 to the date of this request:

Date	Stakeholder	Ofcom Participants	Details of Agenda
03/02/2021	Sir Nicholas Clegg and Facebook	CEO Dame Melanie Dawes and Stakeholder Manager	How Ofcom is working with the Government, Enforcement, recent Facebook developments, how Ofcom is working with Facebook and updates on projects
20/07/2022	Sir Nicholas Clegg and Meta	CEO Dame Melanie Dawes and 3 x Policy Directors	Online Safety Bill catch up, Metaverse, DRCF and Meta, previous engagement with Nick Clegg and Meta and Meta in the news

We have provided details of the roles of the Ofcom attendees however we consider that the names of the Ofcom attendees and the roles/names of the external attendees are personal information exempt from disclosure under Section 40(2) of the FOI Act. This provision 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. Those principles include that personal data must be processed fairly and lawfully. Section 40 is an absolute exemption under the FOI Act and does not require a public interest test.

Please also find attached in Annex 2 and 3 redacted copies of two briefing notes relating to meetings falling within the dates to which your request relates. These documents have been redacted in two ways:

First, as we consider these to contain information exempt under section 36(2) of the FOI Act. In particular, section 36(2)(b)(ii) and (c) of the FOI 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 below) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B below).

Second, we are unable to disclose parts of these documents, as well as notes taken from the relevant meetings, as we consider that disclosure of this information is exempt under section 44(1) of the FOI Act. Section 44(1) of the FOI Act provides that information is exempt from disclosure if its disclosure is prohibited by or under any enactment. The enactment that prohibits the disclosure of this information is section 393(1) of the Communications Act 2003. Under this section, we are prohibited from disclosing information with respect to a particular business that has been obtained in the exercise of our regulatory functions. The minutes of the meetings, obtained either prior to the meeting or in the meeting itself, contain information with respect to the businesses attending the meetings and none of the gateways for disclosure in section 393(2) of the Communications Act 2003 apply here. Section 44 is an absolute exemption under the FOI Act and does not require a public interest test.

We also consider that other exemptions under the FOI Act may be applicable here such as section 43(2) of the FOI Act (which provides that Information is exempt from disclosure if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)) and section 41 of the FOI Act (which relates to Information provided in confidence).

4. As far as we are aware, Ofcom has not destroyed any information that is relevant to this request. We regularly review information we hold and delete any information when we no longer need it for our work.

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,

Katherine Childs

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

## 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. 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, section 36 of the Act is engaged.

I have set out in Annex B the exemption in full, as well as the factors 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: 03/10/2022

Corporation Secretary

**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:
  - 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.

<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"> <li>• Transparency of Ofcom’s engagement with external stakeholders on issues of regulation. This may lead to greater awareness of how Ofcom works as a regulator and how it performs its duties.</li> <li>• The general desirability that Ofcom’s activities as the UK’s communications regulator are transparent.</li> </ul>	<ul style="list-style-type: none"> <li>• In order to run the organisation effectively, Ofcom’s Chief Executive needs to be able to communicate internally about her engagement with stakeholders such as Facebook/Meta and/or senior executives within it. This correspondence ensures that Ofcom’s Chief Executive is appropriately supported, prepared for, and kept abreast of upcoming stakeholder meetings, for example by exchanging views about how best to approach particular meetings generally, or identifying specific issues that could be raised. The threat of disclosure of this internal correspondence would substantively inhibit the Chief Executive’s ability to perform her role effectively in future, and would also inhibit the free and frank provision of advice and exchange of views internally.</li> </ul>

	<ul style="list-style-type: none"> <li>• 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 purpose of its media literacy duty and its preparations for the new online safety regime.</li> <li>• 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.</li> </ul>
<p><b>Reasons why the public interest favours withholding information</b></p>	
<ul style="list-style-type: none"> <li>• We consider that, on balance, the public interest in withholding disclosure of this information outweighs the public interest in disclosure.</li> <li>• Ofcom, as the communications regulator and forthcoming Online Safety regulator, needs to freely engage with external stakeholders 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 external stakeholders to effectively engage on matters of public policy, and therefore disclosure would be contrary to the public interest.</li> <li>• 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.</li> </ul>	