

Reference: 1581202

Information Requests
Information.requests@ofcom.org.uk

12 April 2023

Freedom of Information: Right to know request

Thank you for your request for information about the *Ant Payne* programme broadcast on 13 February 2023 on Capital FM.

We received this request on 13 March 2023 and have considered it under the Freedom of Information Act 2000 (“the Act”).

Your request

You asked: ‘Please provide me OFCOMs full decision why they will NOT investigate complaints made against “ant Payne” on 13/2/23 broadcast on Capital FM, London. OFCOM announced they would not investigate 1436 complaints. Please provide your findings why you will not investigate. Also please provide the statement issued by OFCOM to global radio, stating the reasons why you will not investigate’.

Background

By way of background, Ofcom assesses every complaint it receives. Based on an initial assessment of the complaint and a consideration of the related content, Ofcom will consider whether there may have been a breach of the [Broadcasting Code](#) (or other Ofcom codes or licence conditions). In cases where Ofcom considers there may have been a breach, it will launch an investigation.

Ofcom’s Broadcast and On Demand Bulletin (“the Bulletin”), published every fortnight on our website, includes decisions about the complaints we have considered. The Bulletin covers a range of cases, including those which Ofcom has escalated for full investigation, and those which, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation. The [Bulletin](#) can be accessed on our website.

The volume of complaints received may be a consideration in assessing general audience reactions, but it is not determinative as to whether Ofcom will proceed to investigate any given case. Rather, it is the particular issues which have been raised by the complainant(s) which are of primary concern in Ofcom’s assessment of a programme.

Our response

On 6 March 2023 we announced in our Bulletin that we will not be pursuing an investigation into the complaints raised about the *Ant Payne* programme, broadcast on 13 February 2023 on Capital FM. We made this decision following careful assessment of complaints from listeners who objected to comments made by the presenter during this programme. Given the tragic events in Turkey, we appreciate that the remarks had clear potential to cause offence. However, we took into account the presenter's swift apology later in the same programme when he acknowledged his comments were ill thought-out and misjudged. Given this, we made the decision not to pursue this matter further.

We are unable to provide a copy of the statement issued to Global Radio in relation to this case, as we consider that its disclosure is exempt under the Act. In particular, under section 44 of the Act, information is exempt from disclosure if its disclosure is prohibited by or under any enactment. In this case, section 393(1) of the Communications Act 2003 ("the Communications Act") prohibits the disclosure of information about a particular business which we have obtained in the course of exercising a power conferred by, among other legislation, the Communications Act, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which apply here. Section 44 is an absolute exemption under the Communications Act and does not require a public interest test.

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,

Information requests

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