

Reference: 1562824

Information.requests@ofcom.org.uk

Mr Sam Stroud
sam.stroud@unitetheunion.org

31 March 2023

Dear Mr Stroud

Freedom of Information: Right to know request

Thank you for your request as detailed below. We received this request on 3 February 2023 and have considered it under the Freedom of Information Act 2000 (“the Act”). We contacted you on 3 March 2023 to say we needed more time to consider the public interest in releasing or withholding the information requested - we have now concluded our consideration.

Your request and our response

‘On January 2023, the Secretary of State for Digital, Culture, Media and Sport responded to a question about the assessment her department has made of the impact of a potential merger between Three and Vodafone on staff of those companies. She said that on 10 January 2023, she met Ofcom Chairman Lord Grade and one of the topics discussed was Ofcom’s view on the number of mobile operators in the market.

1. Please provide the subject, agenda and minutes of this meeting.

We interpret your request to refer to the meeting held between Lord Grade and the Minister of State, Julia Lopez on 10 January 2023.

We can confirm that we hold information falling within the scope of your request.

However, we are unable to disclose the particular information you have requested as we consider its disclosure is exempt under section 36 of the Act, in particular, section 36(2)(b)(i) & (ii) and (c) of the Act. These provide 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 provision of advice or 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 information falling within the scope of your request (see Annex A) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B).

Some of the information captured by the request contains personal information. We consider that this information is exempt from disclosure under Section 40(2) of the Act, which provides that personal information about persons other than the requester is exempt where, among other things, its disclosure would contravene any of the data protection principles in the UK General Data Protection Regulations and the Data Protection Act 2018. This includes the principle that personal data must be processed fairly and lawfully. Section 40 is an absolute exemption under the Act and does not require a public interest test.

We also consider that other exemptions under the Act may be applicable here such as section 44 of the Act (which applies to information whose disclosure is prohibited by or under any enactment) and section 43 of the Act (which applies to the disclosure of information that would or would be likely to, prejudice the commercial interests of any person (including an individual, a company, Ofcom, or any other legal entity)).

You may wish to have a look at this [discussion paper](#) for our position on mobile consolidation – we stated in this paper that “*we do not have a fixed position on mobile consolidation. Our stance on any future merger would be informed by our view on the effectiveness of competition that can be expected after the merger, rather than just the number of competitors.*” (see page 2.) This [Mobile Strategy paper](#) may also be helpful.

2. Please provide a list of meetings and the subject, agenda and minutes of any other meetings between ministers and Ofcom where the potential merger between Three and Vodafone has been discussed.

We have searched our records and do not hold information falling within the scope of this question.

3. Please also provide Ofcom’s latest modelling reports or research on the effect of reducing the number of MNOs operating in the UK from four to three.’

We do not hold this information. You may however wish to have a look at this discussion paper on the “[Market structure, investment and quality in the mobile industry](#)” and this paper on [Ofcom’s future approach to mobile markets and spectrum](#).

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

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 provision of advice or 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, 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.

Signed Veronica Branton

Date: 31 March 2023

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 provision of advice,
 - 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.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • The general desirability that Ofcom’s activities as the UK’s communications regulator are transparent. • Transparency of Ofcom’s engagement with external stakeholders including government departments, on areas that we regulate. This may lead to greater awareness of, and trust in, how Ofcom operates as a regulator and how it performs its duties. 	<ul style="list-style-type: none"> • In general, there is a need for Ofcom and government officials to have a safe space to engage in order to enable both parties to carry out their functions effectively. Ofcom needs to be able to engage in open and frank discussions and exchanges with DCMS about the sectors it regulates, enabling it to give its expert opinions or advice where needed, and Ministers also need to be able to engage in such discussions so as to carry out their roles. • Releasing such information to the public about these discussions, would not only inhibit the free and frank exchange of views internally and externally with

	<p>Government, but could impact Ofcom’s working relationship with Government and in turn affect Ofcom’s ability to provide effective input to Government regarding the future policies or legislations that affect the areas Ofcom regulate. This would prejudice the effective conduct of Ofcom’s role as the communications regulator. It would also likely inhibit Ofcom’s ability to work in a collaborative way in the future with external stakeholders, including Government, should it be the case that such discussions would be made public.</p> <ul style="list-style-type: none"> • The information that we hold in relation to the meeting on 10 January 2023 contains views on live matters that may be subject to change to reflect further deliberation or amendments. The disclosure of this information inhibit Ofcom’s ability to effectively deliberate on and discuss the matters raised in the meetings. Since the information contains developing views, the information if disclosed could be misleading and it would not be in the public interest to do so.
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Reasons why the public interest favours withholding information

- We consider that, on balance, the public interest in withholding disclosure of the information requested outweighs the public interest in disclosure.
- Ofcom, as the communications regulator needs to freely engage with government departments 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 Government to effectively engage on matters of public policy, and therefore disclosure would be contrary to the public interest.

