

Reference: 1796184

Information requests

[Informationrequests@ofcom.org.uk](mailto:Informationrequests@ofcom.org.uk)

11 April 2024

## Freedom of Information request: Right to know request

Thank you for your request for information on behalf of GB News with follow up questions to your November 2023 request.

We received this request on 20 March 2024 and we have considered your request under the Freedom of Information Act 2000 ("the FOI Act").

### Your request and our response

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#### A. Request 5(iv) of the September Requests

##### 1. GBNews to Ofcom follow up request dated 14 November 2023

*In response to Request 5(iv) of the September Requests, Ofcom states that it does not hold in searchable format information which confirms the percentage of complaints from lobby groups/political activists/pressure groups/groups affiliated to a political party. Please see immediately below a revised version of Request 5(iv) which we consider will assist Ofcom's ability to respond:*

*Please state the percentage of complaints from the following groups:*

- i. 38 Degrees;*
- ii. the Green Party;*
- iii. Conscious Advertising Network;*
- iv. Stop Funding Hate;*
- v. Voice of the Listener and Viewer; and*
- vi. Led by Donkeys.*

##### 2. Ofcom to GBNews response to follow up request dated 12 December 2023

*"We do not hold this information in a searchable format as complaints are logged by the name of the individual complainant, not by any organisation they may be representing. In any event, please note that any information falling within scope of this request would be likely to be exempt under section 44 of the FOI Act. Section 44 exempts the disclosure of information which is prohibited by another enactment. In this case, we are prohibited under section 393 of the Communications Act 2003 ("the 2003 Act") from disclosing information which relates to a business (including in this case the relevant broadcasters), which we have obtained in exercising our powers in relation to broadcast standards complaints, unless we have the consent of that business or one of the statutory gateways for disclosure under section 393(2) of the 2003 Act is met, neither of which applies here. Section 44 is an absolute exemption and does not require a public interest test."*

##### 3. Further response required

*It is unclear if Ofcom's response was drafted on the basis that it interpreted the request to be*

*referring just to complaints about GBNews or to complaints made against broadcasters generally.*

*In the interests of assisting Ofcom to respond, for now, information is only being sought in relation to complaints about GBNews.*

*In order to mitigate the practical issue that Ofcom has identified (i.e. that complaints are logged by the name of the individual complainant, not by any organisation the complainant may be representing), it is requested that:*

*1. Ofcom runs searches over the complaints that it has received in relation to GBNews to identify references to the six groups previously set out, namely:*

- i. 38 Degrees;*
- ii. the Green Party;*
- iii. Conscious Advertising Network;*
- iv. Stop Funding Hate;*
- v. Voice of the Listener and Viewer; and*
- vi. Led by Donkeys.*

*2. Ofcom reviews any positive search results in order to determine whether it appears that the complaint has been made by or on behalf of any of those six groups.*

*3. Ofcom provides the number of complaints which appear to have been made by or on behalf of any of those six groups.*

*We anticipate that all (or almost all) of the complaints will have been made electronically. Therefore, running search terms over those complaints will not be onerous. The only manual review that will have to be carried out is in relation to those complaints which are responsive to the search terms. Again, we do not anticipate this being an onerous exercise.*

*We note Ofcom's view that information falling within this request would be likely to be exempt under section 44 of the FOI Act. This is on the basis that Ofcom is prohibited under section 393 of the 2003 Act from disclosing information which relates to a business which it has obtained in exercising its powers in relation to broadcast standards complaints, unless it has the consent of that business or one of the statutory gateways for disclosure under section 393(2) of the 2003 Act is met.*

*We do not consider that the exemption can be properly applied in this instance. We assume that this point was being made in relation to complaints about broadcasters other than GBNews. Putting to one side whether Ofcom's analysis is correct, it cannot be the case that it applies to complaints made about GBNews. It is clear from the wording and context of section 393(1) of the 2003 Act that, in this context, the businesses being referred to are the broadcasters that Ofcom regulates. This appears to be common ground as your letter refers to the fact that the businesses "in this case [are] the relevant broadcasters". Therefore, when considering the prohibition in the context of complaints about GBNews, the relevant business is GBNews and Ofcom has GBNews' consent to disclose the information to GB News (and/or its solicitors), thereby meaning that the prohibition on disclosure does not apply.*

We do not consider that we hold the information requested. The request asks for an evaluative exercise to be carried out to determine whether a complaint "appears" to have been made on behalf of one of the organisations listed. In our view this would require an exercise of judgment that would entail the creation of information and therefore the information is not held.

We acknowledge that GB News via Brown Rudnick has given consent for Ofcom to disclose information about it in response to this question. However, the organisations you have listed in this question are also covered by section 393 of the Communications Act 2003 (“the 2003 Act”).

Therefore, even if we were regarded as holding the information for the purposes of the FOI Act and we were able to locate complaints from these organisations, we would not be able to disclose them as section 44 of the FOI Act would apply. In this regard we note that you have selectively quoted our previous response, which stated that the relevant businesses were “(including in this case the relevant broadcasters)”. As you are aware, section 44(1) of the FOI Act provides that information is exempt from disclosure if its disclosure is prohibited by or under any enactment. Section 393(1) of the 2003 Act prohibits Ofcom from disclosing information with respect to a particular business that has been obtained in the exercise of our regulatory functions, unless that business consents or one of the statutory gateways under section 393(2) are met, which do not apply here.

We also note that it is Ofcom’s standard practice to publish our responses to FOI requests. Therefore, while you state that GB News has given consent for Ofcom to disclose the relevant information to it and/or its solicitors, we do not have consent to publish the information.

## **B. Request 9 of the September Requests**

### *1. Point raised to Ofcom on 14 November 2023*

*Ofcom has failed to respond to Question 9 of the September Requests, notwithstanding the further clarification that was provided on 24 and 26 October 2023. The exemption that you now rely on is that the request is excessive and would take 18 hours to administer. In particular, you have cited that meetings with ‘other broadcasters’ would be too onerous. The time period is only over approximately a 6-month period and is based on information that should be readily available. There should be a record of the groups that Ofcom has met in its regulatory capacity.*

*i. Please now respond to this request as soon as possible omitting the category ‘other broadcasters’, but with the inclusion of ‘political parties’, ‘lobby groups’, and ‘campaigning organisation/companies’ (the “Request 9 Groups”), to confirm:*

- a) the number of meetings that were held between Ofcom and each category specified within the Request 9 Groups during the relevant 6-month period;*
- b) the organisations specified within the Request 9 Groups that such meetings were held with; and*
- c) the date of any such meetings that are responsive to (a) above.*

*ii. In terms of the press, please confirm whether meetings have been held between the press and Ofcom during the relevant 6-month period;*

*iii. In circumstances that meetings have been held between the Ofcom and the press during this 6-month period, please confirm approximately how many meetings have been held; and*

*iv. If meetings may have been held in an informal capacity that may not have been recorded.*

### *2. Ofcom response from 12 December 2023*

*“This request is very wide. Ofcom’s statutory remit extends over a broad range of sectors, including broadcasting, telecoms, spectrum, post and online safety. Ofcom has over 1,350 employees which meet with an extremely wide range of individuals and organisations across a broad range of issues on a daily basis.*

*We are therefore unable to process your request as the information is not readily accessible as a considerable amount of time would be needed to locate, retrieve, identify and extract any relevant information. Under section 12 of the FOI Act, public bodies are not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit". The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, and is, for Ofcom, £450. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, identifying, locating, retrieving and extracting the information from any document containing it. The Regulations provide that costs are to be estimated at a rate of £25 per person per hour. Ofcom estimates that it would take at least 18 hours to identify, locate and extract the information you require and as such the cost of complying with your request will exceed the appropriate limit. We would be happy to consider a narrowed request."*

*3. Points that Ofcom needs to deal with and respond to*

*We note that you were unable to readily access the information and that the payment of a fee is required to determine whether Ofcom holds the information requested, to identify, locate, retrieve and extract the information from any document containing it. We confirm that we wish to proceed on this basis noting that Ofcom's estimated fee for doing so is in the total amount of £450.00.*

The FOI Act does not oblige organisations to comply with a request upon payment of the fee ('appropriate limit') that is quoted for excessive time to identify, locate, retrieve and extract information. The FOI Act is not intended to create an unreasonable burden on the resources of an organisation and the appropriate limit is an estimate of how much it may cost to oblige with a request, not an actual calculation in real terms. In any event, as a matter of general policy, Ofcom does not charge fees for responding to FOI requests (unless an excessive amount of printing, photocopying or formatting is involved).

**C. Request 3(i) of the November Requests**

*1. Point raised to Ofcom on 14 November 2023*

*Noting the action taken by Ofcom which caused the suspension of Ofcom's director of Online Safety Supervision, please provide the associated policy and/or policies that were breached in those circumstances.*

*2. Ofcom response from 12 December 2023*

*"This investigation is not concluded therefore we are unable to disclose which policy or policies may have been breached."*

*3. Points that Ofcom needs to deal with and respond to*

*Given media reports that the relevant individual has now left Ofcom, we assume that the investigation is no longer ongoing and therefore the reason why you could not disclose which policy or policies may have been breached no longer applies. Therefore please provide the associated policy/policies that were relevant in those circumstances.*

Ofcom does not comment on individual investigations as this information relates to an individual and is therefore exempt under section 40 of the FOI Act which relates to personal information. We are however able to provide our social media and conflict of interest policies which may be of interest. You can find these attached with this response. Please note these policies are subject to regular review.

**November Requests**

**1. Point raised to Ofcom on 14 November 2023**

Please provide details in respect of any disciplinary action that Ofcom has taken in relation to the conduct of its officers in breach of the 7 principles of public life.

**2. Ofcom response from 12 December 2023**

*"We do not separately hold data on disciplinary action involving the seven principles of public life. Therefore, although we expect any such issue would have been extremely rare if it has occurred at all, to establish the number with certainty we would need to search individual records. We note you have not provided a time period for this question. Under Section 12 of the Freedom of Information Act ('the FOI Act'), Ofcom is not obliged to comply with a request for information if we estimate that the cost of complying with the request would exceed the 'appropriate limit'. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'), and is, for Ofcom, £450. The Regulations provide that costs are to be estimated at a rate of £25 per person per hour, which equates to 18 hours of time. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, identifying, locating, retrieving and extracting the information from any document containing it. Ofcom estimates that it would take at least 18 hours to search for and retrieve the information, in particular any information held prior to 2022. Due to the manner in which this information was recorded prior to 2022, it would require a manual search of older systems in order to identify any information which may be relevant to the request. As such the cost of complying with your request will exceed the appropriate limit. We have therefore been unable to fulfil this question under Section 12 of the FOI Act.*

*Whilst you may wish to consider submitting a narrower, more focused request, for example by reference to a limited date range, please note that further exemptions may apply to some of the requested information, in particular, Section 40(2) of the FOI Act which covers personal information."*

**3. Points that Ofcom needs to deal with and respond to**

*In order to assist Ofcom and narrow this request, the request can be responded to on the basis that it only relates to the period from 1 July 2023 onwards.*

*We do not anticipate the section 40(2) of the FOI Act would be relevant as there would be no need to identify specific individuals.*

Due to the small number of individuals involved we cannot disclose any information in response to this question, as this would constitute personal information and is therefore exempt from disclosure under section 40 of the FOI Act.

**Conclusion**

We have now received a large number of similar requests from Brown Rudnick on behalf of GB News in a short period of time as detailed below.

Reference	Date received	Subject line and number of questions	Response
01675117	25 September 2023	GB News and Ofcom (21 questions)	<a href="#">GB-News-and-Ofcom-publish.pdf</a>
01705767	26 October 2023	Meetings re Ofcom's regulatory duties (1 question)	<a href="#">GB-News-meetings-re-Ofcoms-regulatory-duties-publish.pdf</a>

01717398	14 November 2023	Staff in Standards & Audience Protection, BBC complaints and staff suspension (3 questions)	<a href="#">SAP,-BBC-complaints,-staff-disciplinary-published.pdf (ofcom.org.uk)</a>
01717476	14 November 2023	Further questions - Ofcom and GB News (10 questions)	<a href="#">Further-questions-GB-News-published.pdf (ofcom.org.uk)</a>
01789618	6 March 2024	Public Attitudes research (7 questions)	<a href="#">FOI: Public attitudes research published FOI response (ofcom.org.uk)</a>
01796184	20 March 2024	GB News follow up questions from November FOI (4 questions)	This response
1800467	26 March 2024	GB News - Ofcom Personnel (20 questions)	Response in progress

We responded in full to your first request which included a large number of wide-ranging questions, in order to be helpful and transparent. Subsequently you have continued to submit requests for information along similar themes, responding to which has taken up a large amount of Ofcom's limited resources as a public authority. We reserve the right to consider further requests as repeated and vexatious if appropriate.

I hope this information is helpful. If you have any further queries, then please send them to [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk) – quoting the reference number above in any future communications.

Yours sincerely,

## Information Requests

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### Request an internal review

If you are unhappy with the response you have received to your request for information, or think that your request was refused without a reason valid under the law, you may ask for an internal review. If you do, it will be subject to an independent review within Ofcom. We will either uphold the original decision, or reverse or modify it.

If you would like to ask us to carry out an internal review, you should get in touch within two months of the date of this letter. There is no statutory deadline for us to complete our internal review, and the time it takes will depend on the complexity of the request. But we will try to complete the review within 20 working days (or no more than 40 working days in exceptional cases) and keep you informed of our progress.

Please email the Information Requests team ([information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)) to request an internal review.

### Taking it further

If you are unhappy with the outcome of our internal review, then you have the right to [complain to the Information Commissioner's Office](#).