

Reference: 1823484

Information Requests
information.requests@ofcom.org.uk

13 June 2024

Freedom of Information request: Right to know request

Thank you for your further request for information on behalf of GB News.

We received this request on 16 May 2024 and we have considered your request under the Freedom of Information Act 2000 ("the FOI Act").

Your request and our response

1. Request 9 of the 25 September 2023 requests

The original request stated: "Please provide details, including dates and identities of organisations represented that Ofcom (including but not limited to members of the Content Board or Second Content Panel or Executive Board) have met either in person or remotely with since March 2023 and the purpose of the meeting in relation to its regulatory activities".

Our understanding from the subsequent correspondence, in particular your letters of 12 December 2023 and 11 April 2024, is that Ofcom has so far not agreed to respond to the request on the basis that it has over 1,350 employees and, as a result, the cost of responding to the request would exceed the appropriate limit.

In order to significantly reduce the scope of the request and therefore the cost of responding to it, we are content for Ofcom to provide the information only in relation to members of:

- *Ofcom's Board*
- *Ofcom's Senior Management Team*
- *Ofcom's Content Board*
- *Ofcom's Standards and Audience Protection Team*

We have carried out preliminary enquiries in relation to this request and we are satisfied that we do hold information on details (including the dates, identities of organisations represented, and purpose) of meetings that Ofcom's Board, Senior Management Team, Content Board and the Standards and Audience Protection Team have held with organisations since March 2023 in relation to Ofcom's regulatory activities. However, we are unable to comply with this question as we consider the information is exempt under Section 12 of the FOI Act.

The information is not readily accessible as a considerable amount of time would be needed to locate, retrieve, identify and extract the relevant information. As you are aware, Ofcom's statutory remit covers a number of sectors including broadcasting, telecoms, spectrum, post and online safety. Ofcom colleagues meet representatives of a broad range of organisations to discuss our regulatory activities in these sectors on a daily basis. While you have narrowed your request to Ofcom's Board,

Ofcom's Senior Management Team, Ofcom's Content Board and Ofcom's Standards and Audience Protection Team, this still amounts to approximately 70 individuals, many of whom carry out extensive stakeholder engagement given their senior positions and areas of responsibility at Ofcom. Furthermore, your request asks for this information over a significant period of time i.e. the 15 months since March 2023. This is therefore still a very broad request.

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.

As part of our consideration of the application of the above noted exemption, we have undertaken preliminary enquiries in order to determine whether carrying out the following activities would mean that the request would exceed the appropriate limit: (a) determining whether the information is held; (b) locating the information, or a document which may contain the information; (c) retrieving the information, or a document which may contain the information; and (d) extracting the information from a document. In doing so we have determined that this information is not held on a centralised database in the same manner as complainant data but scattered around the approximately 70 individuals' calendars, emails and Ofcom's online storage systems such as Sharepoint.

We would also need to take into account the time that would be needed to review and prepare the information once extracted, given the need to identify, for example, the personal information of other individuals referred to and the potential for statutory prohibition on disclosure of certain information.

2. Request 12 of the 25 September 2023 requests

The original request stated: "Please state Ofcom's monitoring procedures and policies for broadcasters including which organisations have been monitored since January 2023 and for what periods". In your letter of 23 October 2023 you declined to provide information relating to which organisations have been monitored on the basis that it is exempt from disclosure under Section 44 of the FOI Act. Given Ofcom's approach to this request, we are content for this request to be revised such that Ofcom is now requested to provide the percentage of monitoring time that has been spent on GB News.

We can neither confirm nor deny that we hold information in response to this question as we consider section 44 of the FOI Act applies. This exemption applies to information, the disclosure of which is prohibited under other legislation. In this case, the information in question is covered by section 393 of the Communications Act 2003, which prohibits Ofcom from disclosing information it has obtained and which relates to a business, unless the business in question has consented to the disclosure or one of the statutory gateways to disclosure under section 393(2) applies. Section 44 is an absolute exemption and does not require a public interest test.

As you are aware, our standard practice is to publish responses to FOI requests. Please advise whether your client consents to publication of the relevant information, in which case we can update our response to this request.

3. Request 13 of the 25 September 2023 requests

The original request stated: "Please state how many complainants since January 2023 in relation to GB News have made more than: (i) 1 complaint; (ii) more than 5 complaints; and (iii) in excess of 10 complaints".

In your letter of 23 October 2023 you stated that this information is not held in a searchable form, meaning that you could not provide a response. However, in your 11 April 2024 letter in relation to request 5(iv) of the 25 September 2023 requests, you stated that "complaints are logged by the name of the individual complainant". This statement was made in the context of you explaining that you do not log complaints by reference to the organisation (if any) responsible for the complaint and can therefore not search for that information. The clear implication is that, as you log complaints by the name of the individual complainant, this information can be searched. With that in mind, can you please reconsider whether you are able to provide the information sought by this request.

Complaints are logged by the name of the individual who made the complaint, and not by reference to how many complaints they have made previously (or any organisation they may represent). Data on complainants is also reported separately to programme data on Ofcom's systems. In order to determine whether any individual complainants have made more than i) one complaint; ii) more than two complaints; iii) in excess of 10 complaints about GB News programmes since January 2023, we would need to carry out a highly manual matching exercise which would involve reviewing over 19,000 complaints made over the course of the 17 month period. We consider that the cost of complying with this request would exceed the appropriate limit, as detailed above, and therefore this information is exempt from disclosure under section 12 of the FOI Act.

We also note that in most cases, the volume of complaints is irrelevant to Ofcom's consideration of whether particular programmes have breached the Broadcasting Code ("the Code"). The exception is harm and offence complaints relating to Section Two of the Code, in which case the number of complaints may be relevant. The identity of complainants is wholly irrelevant to our consideration of standards complaints.

4. Request 3(ii) of the 14 November 2023 requests

The original request stated: "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".

In your letter of 11 April 2024 you stated that you could not answer the request as the small number of individuals involved meant that by answering the request you would be providing personal information that is exempt from disclosure. However, we do not see why the data cannot be provided in a sufficiently anonymised form such that it does not constitute personal information.

Due to the small number of individuals involved, we are unable to provide this information in a sufficiently anonymised format such that it would not identify or risk identifying specific individuals

whose names are already in the public domain and/or have been referred to in your previous requests. Therefore the information in response to this question is exempt under Section 40 of the FOI Act which relates to personal information.

5. Request 2(iii) of the 26 March 2024 requests

The original request stated: "Since January 2022, how many internal investigations have been carried out at Ofcom in respect of any breaches by any Ofcom employee and/or officer of the seven principles of public life". In your letter of 24 April 2024 you stated that you can neither confirm nor deny that you hold information in response to this question on the basis that to do so would contravene the data protection principles. We struggle to understand how answering this request would contravene the data protection principles. Providing the number of internal investigations does not identify any individual or otherwise breach the data protection principles. Can you please reconsider your position or provide a more fulsome explanation as to your rationale.

We can neither confirm nor deny that we hold this information. This is due to the small number of investigations which have been carried out in respect of Ofcom colleagues since January 2022. Responding to this request risks identifying individuals who have already been publicly named as being subject to an investigation and/or in your previous requests, in contravention of data protection principles. As the Information Commissioner's Office has made clear, individuals may be indirectly identifiable through other information already held or obtainable from another source¹. Therefore, any further detail is exempt from disclosure under Section 40 of the FOI Act which relates to personal information.

We note your response to our recent FOI response of 11 April 2024 in which we stated that we reserve the right to consider further requests as repeated and vexatious if appropriate. We will continue to keep this under review.

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

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) to request an internal review.

¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/personal-information-what-is-it/what-is-personal-data/can-we-identify-an-individual-indirectly/>

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](#).