

Reference: 01773201

Information Requests
information.requests@ofcom.org.uk

12 March 2024

Freedom of Information request: Right to know request

Thank you for your request for information about postal regulation and pricing of services in the Highlands.

We received this request on 2 February 2024 and we have considered your request under the Freedom of Information Act 2000 (“the FOI Act”). We wrote to you on 27 February 2024 to say we needed more time to consider the public interest in withholding or disclosing the information you have requested – we have now concluded this consideration.

Your request & our response

“Further to S28 of the Postal Services Act, please could you confirm:

1. How many postal services, other than the Royal Mail or Post Office, are currently subject to regulatory conditions imposed by Ofcom?”

Under the Postal Services Act 2011 (which replaced the previous licensing regime), postal operators may provide postal services without the need for any licence or prior authorisation by Ofcom¹. Instead, any operator which provides postal services meeting a certain definition is required to comply with the [regulatory conditions](#) we have set out. As a result, we do not hold data on the number of postal operators which are currently subject to our regulatory conditions.

Our ‘[Review of Postal Regulation](#)’, particularly pages 4-6, sets out further information on the relevant and existing legal framework, which gives more detail on Ofcom’s statutory duties in relation to postal services.

Also, to confirm, Ofcom does not regulate the Post Office. The Post Office and Royal Mail were separated in 2012, and the Post Office is overseen by the UK Government.

“2. If any conditions have been imposed on other service providers, please could you supply details (e.g name, company number, address etc) of the postal services operators and the current conditions that each one have been required to operate under by Ofcom?”

Please see our answer to question 1. Our website sets out all the applicable [regulatory requirements](#) that are applicable to postal operators in the UK, stating where obligations are applicable to all postal operators and when obligations are only applicable to the designated universal service provider.

¹ [s28\(1\) of the Postal Services Act 2011](#)

In particular, all relevant postal operators are required to comply with our consumer protection conditions, which include requirements relating to [complaints handling procedures](#) and for the [treatment of disabled customers](#).

“Lastly, I am interested in whether any work has been undertaken by Ofcom in order to tackle the issue of differential pricing of postal/parcel services in the Highlands and Islands of Scotland.

3. Please could you provide any recorded information held by Ofcom where staff considered this issue and any possible solutions. This may include internal options papers, research or discussion of proposed legislative reform, or other non-regulatory measures, but should not necessarily be limited to this.”

Ofcom has previously published documents which included discussion of this issue. In particular, as part of our monitoring programme during 2019-20 we collected data from parcel operators on geographic service variations and we published our analysis in our [2020 Annual Monitoring Update for Postal Services](#) (see paragraphs 3.30 to 3.43).

We referred to this analysis again as part of our [2022 Review of Postal Regulation](#), please see section 6 of our statement, paragraphs 6.257 to 6.276.

We hold a number of items in the form of correspondence and meeting notes internally between Ofcom colleagues and some involving external parties. These items precede the analysis presented in the publications noted above and contain initial discussions of the scope of review for those publications as well as updates on the progress of those reviews. However, we consider that these items are exempt from disclosure under section 36(2)(b)(ii) and (c) of the FOI Act as they relate to information held by a public authority that if disclosed:

- would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; or
- 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) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B).

“4. Please could you supply any correspondence held on this issue between Ofgem and any of these organisations: UK Government ministers, Scottish Government ministers, Highland Council and Consumer Scotland. Please only supply records generated within the last 3 years.”

You then clarified that you meant Ofcom and not Ofgem here

Ofcom does hold correspondence with some of these organisations on this issue. In particular, as highlighted in Section 3 our ‘2022 Review of postal regulation’ considered this issue and as part of that we received a response from [Consumer Scotland](#) which included comments on this area.

The items in scope of this question include correspondence and meeting notes with the Scottish Government linked to its “Fair Delivery Action Plan” published on 9 August 2020. However, we consider that these items are exempt from disclosure under section 36(2)(b)(ii) of the FOI Act as explained above in our response to Question 3.

We have also identified a PowerPoint presentation which was provided to various stakeholders during a progress meeting and 2 emails to stakeholders to which this PowerPoint was attached and forwarded to. These 3 items have been provided with our response. However please note that any personal information has been redacted under section 40 of the FOI Act. Section 40 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 Regulation and the Data Protection Act 2018. Section 40 is an absolute exemption under the Act and does not require a public interest test.

The Scottish Government website contains some reports which may be of interest, we have included a few examples for your reference, [‘An econometric analysis of postal delivery pricing in Scotland’](#), [‘Fairer deliveries for all’](#), [‘Review of the Statement of Principles for parcel deliveries’](#).

Should you decide to make a further request for information, please note that other exemptions may apply (for further information on the exemptions under the FOI Act, see the Information Commissioner's Office's website e.g. [When can we refuse a request for information? | ICO](#)). You may also find it useful to see which exemptions were used for a past FOI request concerning [correspondence with the Government regarding the postal service USO](#) as it is likely that these exemptions may also apply to your request.

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

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.

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](#).

Annex A

Freedom of Information: Right to know request

Section 36 exemption

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 relevant information requested would 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:

A solid black rectangular box redacting the signature of the author.

Date: 7 March 2024

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 prejudice the effective conduct of public affairs.
- The application of section 36 is subject to a public interest balance.

| 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. | <ul style="list-style-type: none"> • In order to run the organisation effectively, Ofcom employees needs to be able to be informed of and internally discuss any issues relevant to Ofcom’s regulatory activities. The correspondence with the Scottish Government ensures that Ofcom is appropriately informed, prepared for, and kept abreast of these issues. • The threat of disclosure of this internal correspondence discussing the Scottish Government’s plans would substantively inhibit Ofcom employee’s ability to perform their role effectively in future by removing the safe space for colleagues to debate/discuss issues away from external interferences. • Ofcom needs to be able to engage with Government in an informal manner, to discuss matters at a high level inside and outside the scope of regulatory action. This type of engagement allows Ofcom to build relationships with all types of stakeholders. The threat of disclosure of information from these types of engagements would likely discourage the building of such relationships and would therefore have an |

| | |
|--|---|
| | <p>adverse effect on Ofcom’s ability to effectively carry out its functions.</p> <ul style="list-style-type: none"> • 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 collaboratively with Government which may damage the quality of any advice provided and lead to poorer decision making. |
| <p>Reasons why public interest favours withholding information</p> | |
| <ul style="list-style-type: none"> • We consider that the public interest in transparency favouring the disclosure of information relating to the Scottish Government’s ‘Fair Delivery Action Plan’ and emails and materials relating to these discussions are outweighed by the needs of Ofcom and the Government to have a safe space to effectively engage on matters in relation to the postal sector of which Ofcom regulates and therefore disclosure would be contrary to the public interest. • This is because the disclosure of internal correspondence is likely to prejudice the effective conduct of public affairs, as it would have an effect on Ofcom’s employees’ ability to freely and effectively deliberate on and develop ideas on such matters away from external interferences. Any projections discussed may also be subject to change. • Additionally, the disclosure of information between Ofcom and Government would likely inhibit the free and frank exchange of views and may also inhibit Ofcom’s ability to work collaboratively with Government which may damage the quality of any advice provided and lead to poorer decision making. | |