

Reference: 01875615

Information Requests
information.requests@ofcom.org.uk

30 August 2024

Freedom of Information request: Right to know request

Thank you for your request for information about the July 2024 Minutes of the Access Working Group.

We received this request on 6 August 2024 and we have considered your request under the Freedom of Information Act 2000 ("the FOI Act").

Your request

"Under the Freedom of Information Act 2000, I would like to request:

** A copy of the minutes of the first meeting of Ofcom's access working group, which met in July."*

Our response

We do hold information in scope of your request. We consider that disclosure of the information is exempt under sections 36, 41 and 44 of the FOI Act.

1. We consider that the minutes are exempt from disclosure under section 36 of the FOI Act. In particular, sections 36(2)(b)(ii) and (c) of the FOI Act which 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 exchange of views for the purposes of deliberation, or
 - Would otherwise prejudice, or would be likely to otherwise to prejudice, the effective conduct of public affairs.

Section 36 is a qualified exemption, which means that Ofcom is required to consider whether or not the public interest in disclosing the information you have requested outweighs the public interest in withholding the information. In this case, we consider that the public interest favours withholding the information for the reasons set out in Annex B to this letter. In Annex A of this letter, the qualified person, the Corporation Secretary for Ofcom, has confirmed that the exemption applies.

2. In addition, we consider the minutes to be exempt from disclosure under section 41 of the FOI Act. Section 41 exempts the disclosure of information if it was obtained by the public authority from any other person (including another public authority), and the disclosure of

the information to the public (otherwise than under the FOI Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

3. Finally, we consider the minutes you have requested are exempt from disclosure under section 44 of the FOI Act. This exemption provides that information is to be withheld if its disclosure is prohibited under other legislation – in this case section 393(1) of the Communications Act 2003 (the Act). Section 393(1) of the Act prevents us from disclosing information about a particular business which we have obtained in the course of exercising a power conferred by, among other legislation, the Act, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Act is met, neither of which apply here. Section 44 is an absolute exemption under the FOI Act and does not require a public interest test.

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

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(2) of the Freedom of Information Act 2000 (the FOI Act). I am a "qualified person" as referred to section 36(2) of the FOI Act and duly authorised by a Minister of the Crown for the purposes of that section. The limbs of section 36 that apply here are:

- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
 - (b) would, or would be likely to, inhibit—
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.

Set out in Annex B is the exemption in full, as well as the factors that were considered when deciding where the public interest lay in relation to the information concerned.

If you have any queries about his letter, please contact information.requests@ofcom.org.uk.

Signed: Corporation Secretary

Date: 29 August 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
- 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.
- 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 desirability of citizens being confident that decisions are taken on the basis of the best available information. • Knowledge that the arguments relating to a debate will be disclosable may improve the quality of those arguments. • Access services and accessibility are important issues, and are a matter of interest to the public. Releasing the information may build public understanding and confidence in the accessibility of broadcast services and access service providers. 	<ul style="list-style-type: none"> • The document in question contains comments and issues raised by various stakeholders (both regulated services and organisations acting in an advisory capacity). Ofcom, as a sector regulator, depends heavily on its on-going relationship with Stakeholders. Stakeholders would be less willing to come forward and discuss necessary policy issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that what they said to us would be made public. • The document in question contains discussion of issues which may be relevant to the development of Ofcom policies. In order to regulate effectively, Ofcom needs to be able to think through all the implications of particular policy options and undertake, without prejudice, rigorous and candid assessments.

Reasons why public interest favours withholding information

A consequence of disclosure would be that stakeholders would be less likely to come forward and discuss important policy issues, and be less open, with Ofcom. Ofcom would therefore be less able to obtain valuable insight from stakeholders into key issues within Ofcom's remit. Disclosure may also mean that Ofcom employees would be less likely to discuss policy issues openly and explore all

possible regulatory options. These factors would in turn lessen Ofcom's ability to meet its statutory obligation to ensure its regulation is effective and appropriate. This would be against the public interest.

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](#).