

Reference: 1937696

Information Requests  
[information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)

12 March 2025

## Freedom of Information request: Right to know request

Thank you for your request for information about less healthy food ('LHF') advertising restrictions. We received this request on 14 February 2025 and your additional points on 20 February 2025 and we have considered your request under the Freedom of Information Act 2000 ('FOI Act').

### Your request

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*Please provide the information set out below that is held by or on behalf of Ofcom relating to the period between 13 December 2023 and 14 January 2025:*

*(a) The number of meetings that took place between Ofcom and the ASA (including, where applicable, any of its Councils or committees, including CAP and/or BCAP) regarding:*

*(i) the evaluation of the consultation responses (in respect of the consultation commencing 13 December 2023 and concluding 7 February 2024 referred to in the CAP's statement of 13 January 2025); and*

*(ii) the subsequent preparation and publication of guidance relating to the LHF advertising restrictions.*

*(b) Agenda, minutes and/or records of any meeting referred to in paragraph 7(a) above.*

*(c) Records of conversations or correspondence between Ofcom and the ASA (including, where applicable, any of its Councils or committees, including CAP and/or BCAP) showing whether and how statements made by Ministers – whether in parliamentary proceedings, committee meetings, or in published consultation outcomes – were taken into account in evaluating the consultation responses and/or developing guidance on the proper interpretation of the LHF advertising restrictions.*

*(d) A copy of the full legal advice mentioned in CAP's update of 13 January 2025*

### Our response

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Under the Communications Act 2003, Ofcom is the statutory regulator with responsibility for implementing and enforcing new restrictions on the advertising of less healthy food and drink

("LHF") products on TV, on-demand programme services ("ODPS") and in paid-for space online. For TV and ODPS, Ofcom has confirmed that the existing co-regulatory arrangements apply. The Advertising Standards Authority ("ASA") will act as frontline regulator for the restrictions in these media. In addition, Ofcom has designated the ASA as a co-regulator in relation to the online restrictions.

On behalf of the ASA, the Committees of Advertising Practice (CAP) consulted on rules and guidance to implement provisions in the Communications Act, 2003 which will, from October 2025, ban ads for "identifiable" less healthy food and drink products in certain circumstances. The consultation closed on 7 February 2024. On 13 January 2025 CAP published an update explaining, in summary, that in the light of consultation responses and further legal advice around 'brand advertising' there would be a further consultation on revised guidance. This further consultation was published on 18 February 2025 and closes on 18 March 2025. We note that your request preceded the publication of the consultation.

*(a) The number of meetings that took place between Ofcom and the ASA (including, where applicable, any of its Councils or committees, including CAP and/or BCAP) regarding:*

*(i) the evaluation of the consultation responses (in respect of the consultation commencing 13 December 2023 and concluding 7 February 2024 referred to in the CAP's statement of 13 January 2025); and*

*(ii) the subsequent preparation and publication of guidance relating to the LHF advertising restrictions.*

Between 13 December 2023 and 14 January 2025, Ofcom held 17 scheduled meetings with the ASA to discuss the LHF restrictions. These meetings dealt broadly with the implementation of the restrictions, including the preparation and publication of the related guidance, which may have included some reference to the evaluation of responses to the consultation referred to in the request.

*(b) Agenda, minutes and/or records of any meeting referred to in paragraph 7(a) above.*

And,

*(c) Records of conversations or correspondence between Ofcom and the ASA (including, where applicable, any of its Councils or committees, including CAP and/or BCAP) showing whether and how statements made by Ministers – whether in parliamentary proceedings, committee meetings, or in published consultation outcomes – were taken into account in evaluating the consultation responses and/or developing guidance on the proper interpretation of the LHF advertising restrictions.*

We hold some information in response to questions (b) and (c), however we consider it is exempt from disclosure under section 36 of the FOI Act. In particular, sections 36(2)(b)(ii) and (c) of the FOI Act 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.

*(d) A copy of the full legal advice mentioned in CAP's update of 13 January 2025*

We are unable to disclose the information requested under question (d) as it falls under the exemption in section 42 of the FOI Act. This deals with the exemption of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. Annex C to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

We 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

## 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 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—
    - (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, section 36 of the FOI Act is engaged.

I have set out in Annex B the exemption in full, as well as the factors 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](mailto:information.requests@ofcom.org.uk).

Signed: Corporation Secretary

Date: 12 March 2025

**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 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"> <li>• The desirability of citizens being confident that decisions are taken on the basis of the best available information.</li> <li>• Knowledge that the arguments relating to a debate will be disclosable may improve the quality of those arguments.</li> <li>• Understanding the reasons for proposals made by CAP.</li> </ul>	<ul style="list-style-type: none"> <li>• Ofcom and the ASA are in a co-regulatory arrangement. The effective operation of that arrangement requires close cooperation between Ofcom and the ASA/CAP. Such close cooperation is essential, for example, in order for the organisations to coordinate effectively with stakeholders and to develop approaches to policy matters that effectively utilise the expertise and information available to each body. This cooperation results in a regime which works effectively for consumers.</li> <li>• The matters in issue are the subject of an active consultation process. Publication of deliberative discussions would be likely to prejudice that process by making the final consultation position less clear.</li> </ul>

**Reasons why public interest favours withholding information**

The public interest in disclosure in this case is significantly limited by the fact that there is an open consultation on the affected guidance. The reasons for proposing such guidance are set out in the consultation. Stakeholders have an opportunity to examine and question those reasons. The public interest against disclosing is strong as the publication of information of this kind, involving the close cooperation between co-regulators for the purposes of developing proposals for consultation, would be likely to significantly affect the future course of that close cooperation,

rendering it less efficient and effective. Publication would also be likely to interfere with the consultation process by making the position adopted by ASA less clear.

## Annex C

### Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> <li>Open policy making and public confidence in regulated activities.</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom considers the request for legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings. The advice held by Ofcom was obtained by the ASA and shared with Ofcom.</li> </ul>
Reasons why public interest favours withholding information	
<ul style="list-style-type: none"> <li>It is Ofcom’s understanding that privilege still applies to this document. The public interest argument for disclosure is weak. An explanation has already been provided as to the high-level effect of the advice. Further information relevant to the affected proposals is provided in the open consultation.</li> </ul>	

#### 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](#).