

Your response

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<p>Question 1: Ofcom’s general approach to information gathering (Section 3 of the draft guidance)</p> <p>Do you have any comments on Ofcom’s proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?</p>	<p>Confidential? – No</p> <p>We welcome Ofcom’s intention to oversee the new online safety regime in an informed and evidence-based manner and understand that the use of information gathering powers will play an important role in this.</p> <p>We also welcome that Ofcom has published guidance on how it intends to use these powers and has opted to consult on a draft version of the guidance. We appreciate the opportunity to provide feedback on Ofcom’s proposed approach and hope the comments and suggestions provided in this response are helpful.</p> <p>As developed further below, we consider that the following changes should be made to the current draft guidance:</p> <ul style="list-style-type: none"> (a) Where services can provide justification for why an entire document is confidential, this should not be rejected on the basis that it is a “blanket” claim to confidentiality. (b) Ofcom should only disclose confidential information submitted to it in extremely limited circumstances, and the guidance should set out examples of situations in which Ofcom consider disclosure is necessary for the purpose of facilitating the exercise of their regulatory functions. <p>[REDACTED]</p> <p>[REDACTED]</p> <p>We agree with Ofcom that it is important to be transparent about its intended approach to using the information gathering powers granted to it under the Act, particularly because of the significant business impact the use of certain powers could have on regulated services. Ofcom states that while it will take into consideration representations made by recipients as to what constitutes confidential information, Ofcom will ultimately decide what is confidential, and blanket claims to confidentiality covering entire documents are <i>“unhelpful and unlikely to be accepted”</i> (Annex 1, para 3.21). We consider that this is an over-generalisation, and that confidentiality should be considered</p>

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	<p>on a case-by-case basis: while we accept that it will be unhelpful for services to make blank assertions of confidentiality over the entirety of each document they disclose, in many cases, entire documents are genuinely confidential and/or commercially sensitive. Ofcom should therefore recognise in its guidance that it will not always be appropriate or possible for services to identify specific text or parts of the document that are confidential. Where services are able to provide justifications for why the document is confidential, this should not be refused purely on the basis that a “blanket” approach to confidentiality is being applied.</p> <p>As currently drafted, the guidance fails to recognise that there may be good reasons for a service provider asserting confidentiality over an entire document, including to protect against the circumvention by malicious actors of the systems and processes it uses to protect users from harm, as well as commercial sensitive information.</p> <p>More broadly, Ofcom should not disclose confidential information submitted to it by service providers in response to information requests. We cannot see why doing so would facilitate Ofcom’s functions (e.g. its consultations or transparency reports) but if Ofcom did consider publication to be necessary to facilitate its functions, we think Ofcom should, in all cases, be able to aggregate the information it receives and therefore publish it in an anonymised form.</p> <p>We accept that Ofcom is subject to a statutory confidentiality duty under s.393 of the Communications Act, in respect of any information it obtains using its Online Safety Act information gathering powers. However, as the draft guidance recognises at paragraph A3.23, this is subject to a number of exceptions, including a broadly framed power to disclose confidential information where Ofcom considers such disclosure necessary to enable it to carry out its regulatory functions under a number of different regulatory regimes.</p> <p>It would be helpful for additional detail to be provided on situations in which Ofcom consider disclosure is necessary for the purpose of facilitating the exercise of their regulatory functions. The guidance could, for example, provide a list of examples scenarios in which Ofcom may deem it necessary to disclose confidential information. The draft guidance currently only provides (at paragraph A3.26), the</p>

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	<p>example of ensuring “<i>stakeholders can properly understand the basis for our reasoning</i>”. If this example is intended to include the publication by Ofcom of confidential information it has obtained from regulated services in its consultations, we consider that it would not typically be appropriate or necessary for Ofcom to do so.</p> <p>We welcome the inclusion in the guidance of the process set out at A3.28 to A3.34 which Ofcom expects to follow, under which Ofcom will explain any intention to disclose confidential information to the affected service provider and give the service provider an opportunity to make representations prior to disclosure.</p> <p>[Redacted]</p>
<p>Question 2: Information notices (Section 4 of the draft guidance)</p> <p>a) Information notices</p> <p>Do you have any comments on Ofcom’s proposed approach to the</p>	<p>Confidential? – No</p> <p>Requirement for services to obtain information from third parties</p> <p>Ofcom notes at paragraph A4.13 that as well as requiring the provision of information already held, it has the power to require a recipient of an information notice to “obtain or generate information”. We consider that Ofcom should</p>

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<p>process for issuing and responding to information notices.</p> <p>b) Requiring a test</p> <p>Do you have any comments on our proposed approach to information notices that require recipients to perform a test?</p> <p>c) Remote viewing</p> <p>Do you have any comments on our proposed approach to Remote Viewing Information Notices? For example, to the factors that we may take into account when considering whether to issue a Remote Viewing Information Notice.</p> <p>d) Coroner Information Notices</p> <p>Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities in connection with an investigation or inquest into the death of a child?</p> <p>e) Naming a senior manager</p> <p>Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?</p>	<p>clarify that it will not ordinarily be necessary or proportionate to require a recipient of an information notice to obtain information, which they do not hold, from third parties. This is an intrusive power which could require recipients of information requests to invest significant time and resources into contacting and making arrangements with third parties to obtain information.</p> <p>Remote viewing information notice</p> <p>We welcome Ofcom’s confirmation that it will generally exercise the power that imposes the least burden on stakeholders while still enabling it to fulfil its objectives (Annex 1, para 3.11), and its recognition that it will only issue a remote viewing information notice in “<i>more serious or complex cases</i>” (Annex 1, para 4.53). However, the draft guidance currently does not go far enough in recognising that this power is extremely intrusive and may be resource-intensive for services, and should therefore only be used in very limited circumstances. We recommend that the guidance sets out that the power will only be used where:</p> <ul style="list-style-type: none"> (a) Ofcom has a serious concern that a service is not complying with a specific requirement of the Act, and the use of the power would provide evidence specifically to confirm this concern. Ofcom should first consider whether there are any less intrusive methods available to determine compliance, only issue a remote viewing information notice where this is the only way in which the information can be obtained, and identify in the notice the specific requirements and concerns at issue; and/or (b) Ofcom has first attempted to use an information notice under the typical process (that is, without requiring remote viewing) to obtain the required information, but has not received satisfactory information from this request (for example, by requiring the recipient to generate information through the performance of tests). <p>Given the intrusive nature of the power and the large burden it places on services in response, we consider that these are the only circumstances in which such intervention is proportionate.</p> <p>████████████████████</p>

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	<p>[Redacted response text]</p>

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