

Reference: 529188

Jerin John
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18 April 2018

Freedom of Information: Right to know request

Thank you for your request for information where you asked about Ofcom's Board papers.

This was received by Ofcom on 20 March and it has been considered under the Freedom of Information Act 2000 (the Act).

You asked:

Please provide the following proposal agreed in Jan 2018:

Proposal for the review of Board Effectiveness 2018

10. The Board agreed a proposal for an internal Board effectiveness review, to commence in January 2018.

The relevant Board paper looks at how to arrange the work of the Board in order for it to be operationally effective, it does not discuss specific policy matters.

Ofcom considers that the information you have requested is withheld as it is exempt from disclosure under section 36 of the Act. Section 36 exempts information from disclosure if it would, or would be likely to, inhibit the free and frank provision of advice or views for the purposes of deliberation or prejudice the effective conduct of public affairs. This is a qualified exemption and is subject to a public interest test. Broadly, this means that the information should only be withheld under the exemption where the public interest in doing so outweighs that in favour of disclosure.

The public interest test is detailed in Annex B to this letter. In the letter in Annex A, Steve Gettings as a "qualified person" confirms that in his reasonable opinion disclosure would prejudice the three elements of Section 36(2)(b) and (c) is not in the public interest for Ofcom to disclose the information.

If you have any queries, then please contact information.requests@ofcom.org.uk. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Jerin John

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Freedom of Information: Right to know request

Section 36 exemption

A part of the information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act.

I am a "qualified person" as defined in section 36(2) of the Freedom of Information Act 2000 and duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, disclosure of the information requested would, or would be likely to, prejudice the effective conduct of public affairs.

Also, 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 C 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 *S. Getty*

Date *17.4.2018*

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"> • Citizens will gain an insight into the operation of Ofcom. • Knowledge that the sector regulator is well organised. | <ul style="list-style-type: none"> • Ofcom's internal operational issues are less likely to be discussed and the Executive are less likely to be open in their discussions with the Board, if they knew what they said would be made public. Disclosure may in future discourage provision of information by the Executive to the Board. • In addition, to operate effectively, Ofcom needs to be able to think through all the implications of particular internal operational options and undertake without prejudice rigorous and candid assessments. Disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberating and this in turn would prejudice the effective conduct of Ofcom's affairs. |

Reasons why public interest favours withholding information

A consequence of disclosure would be that the Ofcom Executive would be less likely to come forward to discuss operational issues, and be less open, with their Board. Ofcom would therefore be less able to gauge their views.

These factors would in turn lessen Ofcom's ability to function as a robust and effective regulator. This would be against the public interest.