

Ofcom ref: 00556595

Information Requests
Email: information.requests@ofcom.org.uk

30 July 2018

Ref: 00556595, Freedom of Information: Right to Know Request

Thank you for your request for information which we received on 2 July 2018. We have considered this request under the Freedom of Information Act 2000 ('the Act').

You referred to your complaint to Ofcom about ITV News at Ten broadcast on 11 May 2018 and requested "*all Ofcom documents and data relating to my complaint, so that I can assess the basis on which Ofcom decided not to pursue my complaint*".

Ofcom's decision under the Act

The information Ofcom holds in relation to your request comprises an internal note recording the closure of that complaint ('the closure note').

The closure note is being withheld under sections 36(2)(b)(ii) and 36(2)(c) of the Act¹. These exemptions apply when, in the opinion of Ofcom's 'qualified person' (namely, our Secretary to the Corporation, Mr Steve Gettings), disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice, or be likely to prejudice, the effective conduct of public affairs.

There is one main reason why Mr Gettings has taken the view that the exemptions under section 36 of the Act have been engaged and why, having now balanced the public interest in disclosing the information against the public interest in withholding it, he is satisfied that the exemption applies, as set out below.

¹ See: <https://www.legislation.gov.uk/ukpga/2000/36/section/36>

This information relates to the free and frank exchange of views by Ofcom's Content Standards Licensing and Enforcement ('CSLE') team, for the purposes of deliberating on whether or not the broadcasts fell within Ofcom's remit and/or raised issues warranting further investigation under the Ofcom Broadcasting Code ('the Code'). Given the number of complaints Ofcom receives each year with regard to broadcast standards (approximately 28,000) it is important that Ofcom's CSLE team is able to deal with these effectively and efficiently. If this information was to be disclosed, it would likely inhibit the extent to which CSLE team members would feel able to communicate openly and report candidly in their closure notes, thereby prejudicing Ofcom's ability to reach a view on complaints and resolve them as effectively and efficiently as possible.

Further information as to how the public interest in disclosing the requested information has been balanced against the public interest in withholding it under section 36 of the Act is set out in Annex A, enclosed.

Further information on the closure of the broadcast complaints

Under *Ofcom's Procedures for investigating breaches of content standards for television and radio* ('the Procedures')², Ofcom does not normally correspond with individual complainants as to the outcome of their complaints. Given your request, however, we would like to be as helpful as possible, and on that basis have provided some further explanation.

Complaints about content standards are assessed in accordance with our Procedures. Ofcom reviews every complaint received to make an initial assessment and reviews the relevant broadcast to consider whether it raises potentially substantive issues under the Ofcom Broadcasting Code³ which warrant investigation by Ofcom. When assessing material under the Code, in addition to giving consideration to material against the requirements of the relevant Code rules, Ofcom also takes account of other relevant factors such as: our published Guidance on the Code⁴; precedent cases; and, audience research.

If we consider that these rules may have been broken, we work swiftly to investigate. Should we conclude our rules have been broken, we have the power to impose sanctions on broadcasters. You can find decisions about complaints we have received in Ofcom's Broadcast and On Demand Bulletin, published every fortnight on our website here:

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins>.

² See: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

³ See: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

⁴ See: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programmeguidance>

Our decision that the material related to your complaint did not breach the rules in our Broadcasting Code was made after we very carefully reviewed the material and considered the concerns you raised in your complaint below:

“The first item was a story about Gaza Palestinians' demonstrations on the border with Israel. A Palestinian spokesperson was interviewed, but not an Israeli. The Palestinian viewpoint was amply expressed throughout the lengthy piece, but Israel's perspective was not discussed or expressed at all. Israel's blockade of Gaza was mentioned, with no mention of Egypt's blockade of Gaza, which is of equal significance in this story. Reference was made to the anniversary of Israel's creation being 'the day 750,000 Palestinians were forced to flee Israel'. There is in fact a historical debate about how many Palestinians left the territory of what is now Israel, why they left and when

(https://en.m.wikipedia.org/wiki/Causes_of_the_1948_Palestinian_exodus)”

We assessed the programme under Rule 5.1 of the Broadcasting Code which states:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”

We considered carefully the concerns that you raised that ITV News' report was biased against Israel, and whether it raised issues which warranted investigation by Ofcom under Rule 5.1 of the Code. In our view, however, this material did not raise substantive issues under the Code that warranted investigation by Ofcom.

We hope you find this information helpful. Please quote the reference above in any further communication.

Yours sincerely

Information Requests

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 exception 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

Section 36: Prejudice to Effective Conduct of Public Affairs

Section 36 exempts information from disclosure where this would, or would be likely to, have any of the following effects:

- a. inhibit the free and frank provision of advice,
- b. inhibit the free and frank exchange of views for the purposes of deliberation; or
- c. 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 the 'public interest' test.

Factors for disclosure	Factors for withholding
<p>Open policy making may lead to increased trust and engagement between stakeholders and regulators; and</p> <p>The desirability of stakeholders being confident that decisions are taken on the basis of robust debate and the best available information.</p>	<p>Disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberating upon, broadcasting complaints; this in turn would prejudice the effective conduct of Ofcom's affairs, insofar as compromising its ability to carry out its statutory role in dealing with broadcast complaints; as effectively and efficiently as possible</p>
Reasons why public interest favours withholding information	
<p>In order for Ofcom to undertake its statutory duties in relation to determining complaints about broadcast standards, it is important that Ofcom is able to determine quickly which matters to investigate and to commit resources to, and that the CSLE team is able to record candidly its closure notes, so as to ensure the efficient and effective use of its limited public resources.</p> <p>The disclosure of the information requested would not further the public interest but rather may hinder it because of the detriment it would have on Ofcom's ability to effectively consider broadcasting complaints.</p>	

Section 36 exemption

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 am 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, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so 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 above the factors I considered when deciding where the public interest lay.

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

Signed.....Steve Gettings.....

Date.....27/7/18.....

Steve Gettings
Secretary to the Corporation
Ofcom