

Julia Snape
Information requests

2 March 2018

Freedom of Information request

Thank you for your request for information dated 6 November 2017 for correspondence related to Fox/Sky.

You have requested from us:

“copies of the following documents insofar as they relate to, and are in connection with, Ofcom’s 2017 investigation into the anticipated acquisition of Sky plc by 21st Century Fox, Inc.:

- *Any written correspondence (by letter and/or email only) between Ofcom and the Department for Culture, Media and Sport; and*
- *Minutes of any meetings (available in a written digital (e.g. Word or PDF) format only) between Ofcom and any members of the Department for Culture, Media and Sport.”*

We have considered your request under the Freedom of Information Act 2000 (‘the FOIA’). I attach a series of pdfs containing the requested information, insofar as it may be disclosed to you.

Explanation of the documents

Some of the relevant emails had attachments.

Where the attachment has been published already, we have not provided it as the information is accessible to you by other means and is exempt from disclosure under section 21 of the FOIA. For your convenience, we set out below some relevant links:

- DCMS’s published documents are available [here](#).
- Ofcom template licences are available [here](#).

Certain information – for example, the confidential version of our Report to the Secretary of State – are the same as published documents save in respect of redactions made in the published document to protect information we are statutorily prohibited by part 9 of the Enterprise Act 2002 or section 393 of the Communications Act 2003 (depending on how the information came to us) from disclosing, or the Data Protection Act. This information is exempt from disclosure under sections 44 or 40 of the Act. These documents are also reasonably available to you already to the extent that they can be disclosed, and so we have not reproduced those.

Certain attachments comprise submissions made by, or correspondence to and from Ofcom or DCMS with, third parties. We consider that these are all subject to the statutory prohibition on

disclosure in Part 9 of the Enterprise Act 2002, and have withheld them in their entirety on that basis.

Redactions to the documents

Some of the information in the documents is redacted as it is subject to the prohibition on disclosure in Part 9 of the Enterprise Act 2002 and is therefore exempt from disclosure under section 44 of the FoIA. Section 44 is an absolute exemption under the Act and does not require a public interest test.

You will note that in the information, Ofcom asserts that certain information (a list of subsidiaries of Fox and Sky) was prohibited from disclosure because we relied in part on information obtained through our Broadcasting Act functions to create it. It is provided to you now because the information has since become public domain.

The correspondence also contains personal data, including the names and contact details of staff at Ofcom and DCMS. Section 40(2) of the FoIA provides that personal data which relates to persons other than the requester is exempt where, amongst other things, its disclosure would contravene any of the data protection principles in the Data Protection Act 1998 (DPA). Those principles include that personal data must be processed fairly and lawfully. This is an absolute exemption and is not subject to a public interest test.

Finally, Ofcom considers that some of the information is exempt from disclosure pursuant to Section 36 of the FOIA for the reasons set out in Annexes to this letter. In Annex A to this letter the Corporation Secretary confirms it is not in the public interest to release this information.

Yours sincerely,

Julia Snape

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 B 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.

SignedSteve Gettings.....

Date.....2 March 2018.....

Annex B – application of section 36 exemption to certain email addresses and security information

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:

- 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.
- This Annex relates to certain email addresses. These do not contain any personal data.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • The desirability of Ofcom being transparent. • Visibility to the public of which information went to whom. 	<ul style="list-style-type: none"> • When email addresses enter the public domain they may be used by individuals and organisations in place of the email addresses which are designed for that purpose. This can lead to systems becoming overloaded and information not being received in the right place at the right time. • When passwords and information about internal communications structures enter the public domain they may be misused by hackers.

Reasons why public interest favours withholding information

The disclosure of the information would not inform the public debate on the Fox/Sky merger, and would risk the misuse of the information in a way which would prejudice the effective conduct of public affairs.

Annex C – application of section 36 exemption to certain drafts

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 Ofcom being transparent. 	<ul style="list-style-type: none"> • The information concerned is in draft. Disclosure of draft documents would tend to deter institutions from sharing drafts with one another, which would lead to a poorer quality output in the end • The information concerned relates to press notices and Q&A which have been made public to the extent that any journalists asked those questions • The information concerned would not further public understanding of the transaction.

Reasons why public interest favours withholding information

Ofcom needs to be able to share draft press releases etc with our sponsoring department in a way which is not inhibited by the fear of their future disclosure.