

Reference: 542614

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Information Rights
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17 July 2018

Freedom of Information: Right to know request

I am writing further to our letter dated 12 June 2018, regarding your Freedom of Information (FoIA) request where you asked for certain information relating to access charges for calls to non-geographic numbers.

We have now considered the public interest in disclosure of documents that fall within scope of your request under question 2. This part of your request asked for:

“Copies of internal correspondence or minutes of meetings (which, for the avoidance of doubt includes within Ofcom, the PSA and between Ofcom and the PSA) relating to concerns about the magnitude of the Access Charge levied by Originating Communications Providers.”

We are able to disclose some information in response to your request and this is attached with this letter. Some exemptions have been applied to the documents we are disclosing and the remainder of the information that we hold that falls within scope of the question is exempt entirely from disclosure.

The exemptions that we consider apply are in respect of section 36(2), section 40(2) and section 42 of the FoIA.

Section 36(2) relates to free and frank exchange of views and in applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information. Our reasoning is set out in Annex B to this letter. In Annex A to this letter the Corporation Secretary confirms it is not in the public interest to release this information.

Some documents also contain personal data, including the names and contact details of staff at Ofcom. 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, section 42 of the FoIA is in respect of information to 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. The attached 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.

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,

Julia Snape

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 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.

SignedSteve Gettings.....

Date.....17 July 2018.....

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 citizens being confident that decisions are taken on the basis of the best available information; • Knowledge that the arguments relating to a debate will be disclosable may improve the quality of those arguments. 	<ul style="list-style-type: none"> • Ofcom, as a sector regulator, depends heavily on its on-going relationship with Stakeholders. Stakeholders would be less willing to come forward and discuss necessary policy issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that what they said to us would be made public. • To regulate effectively, Ofcom needs to be able to think through all the implications of particular policy options and undertake without prejudice rigorous and candid assessments.

Reasons why public interest favours withholding information

To disclose internal correspondence would mean that Ofcom employees would be less likely to discuss policy issues openly and explore all possible regulatory options. These factors would in turn lessen Ofcom’s ability to meet its statutory obligation to ensure its regulation is effective and appropriate. This would be against the public interest.

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">• Open policy making and public confidence in regulated activities.	<ul style="list-style-type: none">• Ofcom considers the request for Ofcom’s internal legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings. It is advice given by Ofcom’s own salaried in-house legal advisers and is connected with the giving or obtaining of legal advice.
Reasons why public interest favours withholding information	
<ul style="list-style-type: none">• It is in the public interest that policy decisions taken by Ofcom are taken in a fully informed legal context, where relevant. Ofcom therefore needs high quality effectively obtained legal advice for the effective conduct of its business. That advice needs to be given in context, and with a full appreciation of the facts. It needs to be sought and given in a timely fashion to ensure that policy develops in a fully informed way.• Legal advice cannot be effectively obtained unless Ofcom is able to put all the facts before its in-house legal advisers without fear that they may afterwards be disclosed and used to its prejudice. Without such effectively obtained advice, the quality of Ofcom’s decision making would be much reduced because it would not be fully informed and this would be contrary to the public interest.	