

Reference: 491663

Date: 4 December 2017

Julia Snape  
Information requests

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### **Freedom of Information: Right to know request**

Thank you for your request for information where you asked the following:

*I am aware that Ofcom externally reviewed how a monitoring service was procured in Ofcom's Wales office.*

*Please provide me with all information and correspondence you hold regarding this external review including the full report and outcome of the review, name of entity who conducted the review, all internal and external correspondence regarding the review.*

Ofcom received this on 6 November and has considered it under the Freedom of Information Act 2000 (the Act).

By way of background, the review in question concluded that the way the monitoring contract was awarded was not consistent with Ofcom's required processes and a competitive procurement should have been undertaken. The review also concluded that the decision to procure the service was based on its usefulness, and the fact that employees of the supplier hold positions on the Advisory Committee for Wales had no bearing on the decision. As a result of these findings, the relevant colleagues have received further training to ensure that procurement policies and procedures are followed properly in future.

Before the review was initiated, the monitoring agreement was ended. This remains the case. Ofcom Wales will be carrying out a procurement process to identify a supplier for monitoring services in Wales in line with Ofcom's internal processes and policies.

In relation to your request, I am writing to advise you that Ofcom is unable to disclose the information you are seeking.

The information requested falls within two of the exemptions applicable under the Act.

Section 40 of the Act provides an exemption from the right to know where the information requested is personal data protected by the Data Protection Act (DPA). The information concerning the report and its outcome contains personal data, as it constitutes an internal assessment of the conduct of certain Ofcom employees in relation to the carrying out of their

work. We consider that disclosing the information would constitute a breach of the first data protection principle. Disclosure of the information would not be fair given: the potential impact on the individuals concerned; their reasonable expectations about the privacy of information concerning the assessment of the performance of their work; and the limited public interest in disclosing such internal assessments.

Some information is also exempt from disclosure under section 43 of the Act, which deals with the exemption of information that would prejudice the commercial interests of a person or company. This information relates to communications between Ofcom and the external provider who produced the relevant report. 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 to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

It is likely that other exemptions will apply.

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

**Section 43 – where information, if disclosed, would, or would be likely to, prejudice the commercial interests of any person**

Factors for disclosure	Factors for withholding
<p>Open policy making and decisions and public confidence in regulated activities</p>	<p>Ofcom carried out a procurement exercise to engage with external expertise in order to carry out an investigation. If this data were to be passed to a third party, the commercial interest of the external resource would be likely to be prejudiced. This could make it more difficult to procure services in future.</p>
<p style="text-align: center;"><b>Reasons why public interest favours withholding information</b></p> <p>Ofcom needs to be able to engage external resource where it is efficient to do so. The release of this information into the public domain would be likely to prejudice the information provider’s commercial interests, as it would be likely to have a detrimental impact on their commercial revenue. It would not be in the public interest for Ofcom to endanger its relationship with such providers by publishing the information, as they will in the future be unlikely to engage in any procurement exercise with Ofcom, knowing any sensitive financial data would be made public. This will reduce the availability and quality of the information Ofcom has before it when making its decisions.</p>	