

Reference: 337102

27 September 2016

Thank you for your letter dated 30 August addressed to Sharon White regarding electronic programme guides ('EPG') and an information request. Your letter has been passed to me as the Acting Group Director, Content & Media Policy, which oversees this policy area.

The EPG Code

Ofcom is aware of the important role that EPG prominence has played in supporting the PSB system and, more recently, the local television sector. Indeed, our last PSB Review concluded that the core principles that underpin public service content and delivery endure; that public service content should be universally available, easily accessible on systems that viewers use, and prominent for ease of selection.

In our 2014-15 Annual Plan¹, we noted that the Government was considering the potential for reform in respect of the regulation of prominence on EPGs, that we would support the government in developing new legislation and would consider how the existing Code should be revised in light of any legislative change.

The Government's decision took longer than we had anticipated, meaning a potential EPG Code Review was also included in Ofcom's annual plan for 2015-16. But the Government has now finished its process, concluding that the system remains effective and ruling out legislative reform.

We recognise that under section 310 of the Communications Act 2003, we are required to review the prominence provisions from time to time². However, Ofcom has limited resources and reassesses how those resources are best deployed at regular intervals. In light of the absence of legislative reform and competing policy priorities, we therefore decided not to carry out a review of

¹ I note your references to Ofcom's intention to review the EPG Code in the Annual Plans of 2006/07 and 2007/08. However, the EPG Code to which those plans refer is not to the Code relating to EPG prominence for public service channels. Rather it is the Code which determines the terms on which EPG services are to be provided. That is a separate issue.

² With regards to section 318 Communications Act 2003 to which you refer, the EPG Code on prominence is not a code which is made for a competition purpose and that section does not therefore apply,

the EPG Code at this time. As you note, we are aware that the current Code may have some limitations and may therefore revisit this position in the future when resources become available.

Your request for information - FoIA

Ofcom has given careful consideration to your request. We are unable to disclose the information you are seeking and we set out our reasons below.

You asked for:

1. *xxxxxx demands full disclosure as to why Ofcom has failed to date to honour its repeated promises of a consultation on the “securing of prominence for public service channels” and all communications with third parties, meeting notes, internal minutes, memos, draft consultation proposals and any other relevant documentation in relation to this matter since 2006.*
2. *xxxxxx trusts that Ofcom will confirm that its review of the EPG code is ongoing and will be published imminently. However, if this review has once again been shelved, xxxxxx requires disclosure of all documentation relevant to this decision and confirmation of how and when it was announced to relevant stakeholders.*

Under section 12(1) of the FoIA, Ofcom may refuse to deal with a request where we estimate that doing so would exceed the ‘appropriate limit’, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI. 2004 No 3244. The appropriate limit for Ofcom is £450, calculated at a rate of £25 per person per hour; this equates to 18 hours of time.

We have estimated that, in order to provide you with the information you have requested it would take at least 18 hours of time for one of our staff members to locate, identify and extract the relevant information, and to then check that the information was complete.

The detailed information you have requested covers several years of Ofcom activity and it may be held in a variety of systems including archives. Work in this area over the time period has been carried out by different groups and teams and many of the individuals that may have worked on it are no longer at Ofcom. We cannot be certain that we would be able to gather together all relevant information as it would take a substantial amount of time for a member of our staff to locate, identify and extract the relevant information to meet your request. It would likely take the staff member who was tasked with this exercise considerable time in order to ascertain who was involved in order to do this.

For the reasons above, we therefore have decided to refuse your request on the basis of Section 12 of the FoIA. If you wish to submit an alternative request with a narrower, more specific scope in relation to this subject, we would be happy to give it our full consideration.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

Steve Unger

If you are unhappy with the response or level of service you have received in relation to your request for Information under FoIA 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