

Reference: 369807

Date: 6 January 2017

Information.requests.org.uk

Freedom of Information request about Ofcom's own initiative investigation into Verso Group (UK) Limited

Thank you for your request for information dated 9 December 2016 regarding Ofcom's own initiative investigation into Verso Group (UK) Limited ("Verso Group"). Your request referred to our update note published on 7 April 2016 regarding Verso Group¹ and asked, "*whether you are able now to publish any or all of the notification, any response received, and any conclusions Ofcom has reached*".

We have considered your request for the notification, any response, and our conclusions under the Freedom of Information Act 2000 ('the Act') and are writing to advise you that Ofcom cannot disclose the information you requested.

In relation to the conclusions, since we have not yet produced a final conclusion, we are unable to disclose it, therefore this is not held. The other information you have requested is being withheld as it falls under the exemptions in sections 31 and 44 of the Act. It is likely that other exemptions will apply.

Notification issued to Verso Group on 7 April 2016

In previous investigations into persistent misuse, Ofcom published a non-confidential version of the notifications made under section 128 of the Communications Act 2003 that are issued to companies subject to an investigation. Ofcom reviewed this practice earlier this year, after we issued the section 128 notification to Verso Group but before publishing a non-confidential version. Ofcom no longer publishes details until we have concluded our investigation.

In relation to Freedom of Information Act requests regarding notifications, we consider that section 31 of the Act applies. Section 31 relates to law enforcement and the functions of a public authority. In applying this exemption, we have balanced the public interest in withholding the information against the public interest in disclosing the information. In the

¹ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_905

annex I have set out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

For information on Section 31 of the Act, please see:

<http://www.legislation.gov.uk/ukpga/2000/36/section/31>

Verso Group's response to the section 128 notification

We consider Verso Group's response to the notification is exempt from disclosure under section 44 of the Act. Section 44 of the Act prevents organisations releasing information if another enactment has said that it cannot disclose it. In this case, we consider section 393 of the Communications Act 2003 applies. This prevents Ofcom from releasing information in respect of a particular business if it has obtained the information in exercise of its powers. One exception is where the disclosure facilitates the carrying out of our duties. This may apply, for example, where we publish a final conclusion, but we do not consider it applies in the present situation where a conclusion is pending. Nor do we consider other exceptions apply. This is an absolute exemption from disclosure so, unlike in the case of section 31, there is not a need to weigh the public interest in disclosure and in withholding disclosure.

For further information on section 44 of the Act, please see:

<http://www.legislation.gov.uk/ukpga/2000/36/section/44>.

Ofcom's conclusion

Ofcom's investigation is ongoing. Once it is concluded, we will publish our decision on our website.² To the extent there is any draft conclusion being worked on within Ofcom that is exempt from disclosure under section 22 of the Act because it is intended for future publication.

In relation to your broader question as to when we intend to publish further information, we plan to do so when a conclusion is finalised. We cannot confirm a date for this, but I understand we currently anticipate this will be early in the New Year (although this is subject to change).

I hope this information is helpful. If you have any questions, please feel free to contact me. Please quote the reference number above in any future correspondence as this will help us to deal with your query more quickly.

Yours sincerely

Julia Snape

² Any final decision will be published here: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_905

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

Section 31: Law Enforcement

Section 31 exempts information if disclosure would or would be likely to prejudice, among other things:

- Whether any person has failed to comply with the law
- Whether any person is responsible for conduct which is improper
- Ofcom’s exercise of its functions for the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

Section 31 is subject to a public interest balance.

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"> • Companies would be likely to be deterred by disclosure from co-operating fully with regulatory bodies thus prejudicing the exercise of Ofcom’s regulatory functions. • Disclosing full details of allegations regarding the conduct of a company prior to receipt and consideration of the company’s comments could be seen to be unfair to the company

Reasons why public interest favours withholding information

- In this case, we consider that (particularly where a conclusion is likely early in the New Year), there is limited public interest in disclosure now, and some risk of unfairness to the company under investigation.
- Additionally, there is a broader risk of deterring co-operation of companies under investigation with Ofcom. There is a public interest in regulated entities co-operating with Ofcom to resolve cases of possible non-compliance with law and regulation.