

Reference: 00359152

8 December 2016

By email to:

Information Requests
Secretariat

information.requests@ofcom.org.uk

Freedom of Information: Right to know request

Dear

Thank you for your request for information, received 10 November, which was as follows:

"Could you tell me what is Ofcom's estimate of the charges it would apply to the BBC when it takes over regulation of the broadcaster in 2017. I understand these have been submitted to the BBC. I would also like to request any information about the estimated costs of transitional work during the current financial year."

We have considered your request under the Freedom of Information Act 2000 (the Act). I am writing to advise you that Ofcom cannot disclose the information you have requested, for the reasons set out below.

Reasons for withholding

The first reason why Ofcom is withholding the requested information is because it falls under the exemption contained in section 44 of the Act. Section 44 applies when another statute prohibits the disclosure of certain information. In this case, section 393(1) of the Communications Act 2003 prohibits Ofcom from disclosing information which relates to a particular business and which it has obtained in the course of carrying out its work, unless that business consents or one of a number of other statutory gateways are satisfied. Disclosure of information in breach of section 393 may constitute a criminal offence.

The information you have requested has been comprised from material which relates to the BBC and which Ofcom has obtained in order to carry out its functions, namely to estimate the likely charges which will apply to the broadcaster. Ofcom does not have the BBC's consent to disclose this information, nor have any of the statutory gateways been met. On this basis, section 393(1) of the Communications Act 2003 applies; this means that section 44 of the Act also applies, exempting the information from disclosure. Section 44 is an absolute exemption under the Act and does not require a public interest test.

In addition, the information you have requested falls under the exemption contained in

section 36(2)(c) of the Act. This exemption relates to information, the disclosure of which would, or would be likely to, prejudice the effective conduct of public affairs. In Annex A, Steve Gettings, as a “qualified person” under the Freedom of Information Act, confirms that in his reasonable opinion this exemption has been engaged.

In summary, the reason why section 36(2)(c) has been engaged in this case is because the information you have requested relates to estimates which are still the subject of ongoing discussion with the BBC. Disclosure of that information may, at this stage, create an inaccurate or misleading impression of the charges which will apply, while also distracting Ofcom from its task of finalizing those figures in time for assuming its new regulatory role. Further detail as to our reasoning is set out in Annex B.

In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing it – this is also set out in Annex B.

Further information in relation to regulatory charges for the BBC

Although, for the reasons set out above, we are unable to provide you with the information you have requested, we would like to be as helpful as possible. On that basis, we have set out below some general background information as how Ofcom calculates the regulatory charges which it imposes on the BBC, and how it will continue to calculate such charges moving forward.

Under the Communications Act 2003, provision is made for the funding of Ofcom’s costs in respect of carrying out its regulatory functions for the BBC. In particular, the BBC is required to pay such sums as may be agreed between Ofcom and itself from time to time or, in default of such agreement, as fixed by the Secretary of State. Further detail as to the charging treatment of the BBC and the way in which Ofcom allocates the costs of regulation to the broadcaster is set out at pages 6 and 15 of our published Statement of Charging Principles, which you can find out our website here:

(https://www.ofcom.org.uk/__data/assets/pdf_file/0019/51058/charging_principles.pdf).

In addition to the Statement of Charging Principles, Ofcom publishes an annual Tariff Table, setting out the charges it levies on the regulatory sectors each year. The Tariff Table for 2016/17 is available on our website here:

https://www.ofcom.org.uk/data/assets/pdf_file/0034/57976/tariff-tables-2016-17.pdf.

Annex 1 (page 19) sets out the underlying planned cost and charges for the 2016/17 year; we do not identify the BBC separately here, as we do not provide details broken by individual stakeholders (as stated on page 4 of the tariff tables), however it is reported within the TV broadcasting sector information.

In assessing the likely additional cost to Ofcom of regulating the BBC from 2017, we have taken into account the need for new staff members and additional legal and market research costs (in particular, the cost of the consumer research needed in order to ensure that we

understand audience expectations and can measure the performance of the BBC and to hold it to account). We intend to apportion and recover these costs from the BBC in exactly the same way as we currently do, as reflected in the Statement of Charging Principles and Tariff Table set out above.

You may also be interested to know that, on 22 November, our Chief Executive, Sharon White, provided an estimate to the Culture, Media and Sport Select Committee as to the extra budget expenditure which is expected as a result of Ofcom regulating the BBC.

A transcript can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/culture-media-and-sport-committee/ofcom-annual-report-201516/oral/43727.pdf>

For ease of reference, the relevant paragraphs in regard to Ofcom's projected additional budget expenditure are copied below:

“Q45 Jason McCartney: *Thank you very much for coming along. We are moving on to the BBC now. On your new involvement with regulating the BBC, what position do you feel you are in, in terms of your resources, to be able to do that?*

Sharon White: *It is a big, new responsibility for us but we have a good track record on broadcasting regulation. We expect to be recruiting an extra 50 people or so—we are an organisation of 800, to give it some sense of scale—and so far we are recruiting some great people. From a resourcing point of view, I am pretty confident—*

Q46 Jason McCartney: *In terms of extra budget expenditure, what is that going to mean for you?*

Sharon White: *Obviously, we are five months out from taking on the responsibility and we are aiming to be both effective and cost efficient. Broadly speaking, we think it will be about £6 million. It is a bit of a broad estimate of people and things like market research and so on, but around £6 million and then we will have a better idea once we have taken on the job.*

I hope that the information that we have been able to provide will be helpful to you. If you have any questions, please contact us.

Yours sincerely

Jenny Borritt

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

Internal Reviews are usually conducted by Steve Gettings, but may be referred to another senior Ofcom employee where Steve Gettings has been involved in the original response.

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

The information you requested is being withheld as it falls under the exemption in section 36(2) of the Freedom of Information Act.

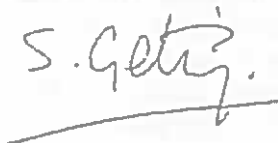
I am a "qualified person", as defined in section 36(5) of the Freedom of Information Act 2000, and am duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, section 36(2)(c) has been engaged. This means that disclosure of the information requested would, 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 it.

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.

If you have any queries about this letter, please contact information.requests@ofcom.org.uk.

Signed

A handwritten signature in black ink that reads "S. Gettings". The signature is written in a cursive style and is underlined with a single horizontal stroke.

30 November 2016

Steve Gettings

Secretary to the Corporation

Ofcom

Annex B

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
- otherwise prejudice the effective conduct of public affairs.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Disclosure of the requested information may provide greater transparency as to the costs incurred by the BBC as a result of Ofcom carrying out its new regulatory functions. Such transparency may lead to increased trust and engagement between members of the public and Ofcom; • The decision by the Government for Ofcom to assume the responsibility for regulating the BBC is a matter in which the public may have a genuine public interest. Disclosure of the requested information may help further inform the public about the implementation of the Government's plans, and the implications of those plans for the BBC. 	<ul style="list-style-type: none"> • Ofcom is still in the process of discussing with the BBC its estimate of the charges which will apply when it assumes its new regulatory role, and finalising those figures. Given this, the disclosure of the requested information could create an inaccurate and/or misleading impression of the charges which the BBC is likely to incur. • Ofcom is currently working to a tight timescale in ensuring that it has completed all the necessary preparatory work prior to assuming its new regulatory role in relation to the BBC. Given this, it needs a safe space in which to discuss its estimated charges internally and to finalise those figures, without the risk of being distracted from this task. • Ofcom also needs a safe space in which to discuss its estimates with the BBC.

Reasons why public interest favours withholding information

While Ofcom acknowledges that, for the reasons set out above, there is a public interest in disclosing the requested information, there is a countervailing public interest in ensuring that the public is not misled by information which Ofcom discloses, and that Ofcom is also able to attend to the preparatory tasks it needs to complete in order assume the new regulatory responsibilities conferred upon it by Government. Given these considerations, Ofcom is of the view that the public interest in withholding the requested information outweighs the public interest in disclosing it.