

Reference: 436333

14 September 2017

Julia Snape
Information requests

information.requests@ofcom.org.uk

Freedom of Information: Right to know request

Thank you for your request for information about Ofcom's Fox/Sky merger public interest tests and fit and proper decision which we have considered under the Freedom of Information Act 2000 ('the FoIA').

Please find below our response to each of your questions.

1. All written submissions received by Ofcom in respect of the 2017 consultation on the Public Interest Tests (both "plurality" and "commitment to broadcasting standards") regarding the proposed 21st Century Fox merger with Sky.

I can confirm that we hold information responsive to this question. As outlined in our Report to the Secretary of State of 20 June 2017 we received 51,555 submissions in response to our Invitation to Comment.

Information provided to us in this context is held by us subject to the prohibition on disclosure in Part 9 of the Enterprise Act 2002.

They are exempt from disclosure under section 44 of the FoIA which inhibits disclosure of information if another enactment prohibits it, in this case the Enterprise Act. Section 44 is an absolute exemption under the Act and does not require a public interest test.¹

You may like to note that we were required to prepare a summary of submissions for the purposes of our Report to the Secretary of State, which is available here:

https://www.ofcom.org.uk/data/assets/pdf_file/0012/103620/public-interest-test-report.pdf.

¹ We consider it likely that sections 36, 40, 41 and 43 would also apply to some or all of this information.

2. All written submissions received by Ofcom in respect of the 2017 consultation on the Fit and Proper Decision which Ofcom carried out in respect of the ownership of Sky.

I can confirm that we hold information responsive to this question. As noted in our fit and proper decision published 29 June 2017, we received 32,554 submissions. Information provided to us in this context is held by us subject to the prohibition on disclosure in section 393 of the Communications Act 2003 and we do not have consent to disclose it. We therefore consider it is exempt from disclosure under Section 44 of the FoIA.²

Our decision on fitness and properness is available here:

https://www.ofcom.org.uk/data/assets/pdf_file/0013/103621/decision-fit-proper.pdf.

3. The minutes and all other notes of all meetings between Ofcom employees and representatives of 21st Century Fox in the period 1/12/2016 - 29/06/2017

I can confirm that we hold meeting notes between Ofcom and 21st Century Fox for the period specified. To the extent that these may be disclosed to you, they are attached.

You will note that we have made substantial redactions to the information concerned.

The vast majority of the redactions have been made by us because the information contained in the notes is held by us subject to the prohibition on disclosure in Part 9 of the Enterprise Act 2002 and is therefore exempt from disclosure under section 44 of the FoIA.³ A meeting took place on 2 June 2017 and the entire note is exempt from disclosure.

To the extent that information contained in these notes is public, it is available in our published Report and fit and proper decision, to which we provide links above.

Some information (the names of some meeting attendees) has been redacted under section 40 of the FoIA which relates to personal information. Where the individual concerned is an employee of Ofcom, this is because our policy is to redact the names of more junior colleagues – those below “principal” level.

We consider the project name we used to be exempt from disclosure pursuant to Section 36 of the FOIA for the reasons set out in Annex B.

4. The minutes and all other notes of all meetings between Ofcom employees and representatives of Sky in the period 1/12/2016 - 29/06/2017

For the purposes of this response to your request, we have interpreted your question as intended to be consistent with all your other questions, as referring to meetings that touched on the proposed merger with Fox. If this interpretation was incorrect, please let us know. (As

² We consider it likely that sections 36, 40, 41 and 43 would also apply to some or all of this information.

³ We consider it likely that sections 36, 41 and 43 would also apply to some or all of this information

you will appreciate, we are the regulator for Sky, which is both a broadcaster and a telecommunications provider. In order to determine what meetings of any kind took place between Ofcom and Sky in the period, we would need to carry out a search covering much of Ofcom. Without having carried out a full scoping exercise, we consider it possible that such a search would take in excess of 18 hours, since the information is not centrally held and would involve contacting a very large number of individuals, some of whom may be on leave, off sick or otherwise unavailable.)

I can confirm that we hold meeting notes between Ofcom and Sky relating to the proposed merger for the period specified. To the extent that these may be disclosed to you, they are attached as in response to question 3 above.

5. The minutes and all other notes of all meetings between Ofcom employees and every other organisation who made oral representations regarding either Public Interest Tests relating to the proposed Fox/Sky merger or the Sky Fit and Proper Owner Decision in the period 1/12/2016 - 29/06/2017.

I can confirm that we hold information responsive to this question.

To the extent that we consider that we can disclose the information to you, it is attached.

You will note that we have made substantial redactions to the information concerned.

The vast majority of the redactions have been made by us because the information contained in the notes is held by us subject to the prohibition on disclosure in Part 9 of the Enterprise Act 2002 and is therefore exempt from disclosure under section 44 of the FoIA.⁴ To the extent that information contained in these notes is public, it is available in our published Report and fit and proper decision, to which we provide links above. As set out above, information provided to us in this context is held by us subject to the prohibition on disclosure in Part 9 of the Enterprise Act 2002. To the extent that we are aware that individuals who attended meetings with us made public the fact that they did so, we disclose that information.

Some information (the names of some meeting attendees) has been redacted under section 40 of the FoIA which relates to personal information as set out above.

We consider the project name we used to be exempt from disclosure pursuant to Section 36 of the FOIA for the reasons set out in Annex B.

6. All further representations from the parties or any other organisations in respect of the Fox/Sky bid in any form(s) not covered above in the period 1/12/2016 - 29/06/2017.

⁴ We consider it likely that sections 36, 41 and 43 would also apply to some or all of this information

We do not consider that this captures any information not caught by one of the questions above.

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, specifically the internal code name Ofcom used for a project 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.

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

Signed

Date.....

Secretary to the Corporation
Ofcom

Annex B – application of the section 36 exemption to Ofcom’s internal project names

<p>Section 36: Prejudice to Effective Conduct Of Public Affairs</p> <p>Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:</p> <ul style="list-style-type: none"> • 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. <p>Key points:</p> <ul style="list-style-type: none"> • 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. 	
<p>Factors for disclosure</p>	<p>Factors for withholding</p>
<ul style="list-style-type: none"> • The desirability of Ofcom being seen to be transparent. 	<ul style="list-style-type: none"> • The disclosure of Ofcom’s internal project code names may facilitate the efforts of those seeking to hack confidential information. • The information concerned is merely a word, which does not provide any information relevant to Ofcom’s reasoning or facilitate public debate.
<p>Reasons why public interest favours withholding information</p>	
<p>The risk that disclosure of information may facilitate the efforts of those seeking to hack confidential information outweighs the public interest in Ofcom being seen to be transparent where the information concerned will not provide any information relevant to Ofcom’s reasoning or facilitate public debate.</p>	

Highly Sensitive

File note of meeting with Ed Miliband MP (EM), Vince Cable (VC) and Lord Falconer (LF), to discuss their submission to the ITC for the public interest test

Wednesday 30 March 12pm

Ofcom
Polly Weitzman (PW)
Kevin Bakhurst (KB)
Tony Close
Tom Walker
Richard Wronka
540
Siobhan Walsh
Dilip Roy (DR)

The discussion opened with a description of the process and the relationship between the two processes that Ofcom are running. PW discussed the relevance of issues to both processes, and that they were both linked.

544.

Lisa Bloom

File note of meeting between Lisa Bloom, Wendy Walsh and Ofcom, to discuss Lisa Bloom's submissions to Ofcom

Monday 8 March 4pm

Ofcom	Lisa Bloom
Tony Close (TC)	Lisa Bloom (LB)
Tom Walker	Wendy Walsh (WW)
Richard Wronka (RW)	S40
S40	
Jess Hinings	
S40	

TC opened by making introductions. He explained that we are in a quasi judicial process, we could not discuss our thinking and engage in debate, we would be in listening mode. It was an opportunity for Walsh and Bloom to tell us what they wanted us to know.

S44

Douglas Wigdor

File note of meeting between Douglas Wigdor and Ofcom, to discuss Douglas Wigdor's submissions to Ofcom

Thursday 11 March 4pm

Ofcom	Douglas Wigdor
Tony Close (TC)	Douglas Wigdor (DW)
Tom Walker	S40
Richard Wronka (RW)	
S40	
Jess Hinings	
S40	

TC made an introduction to the meeting, setting out his expectations of how the meeting would run and introducing the team. He noted that this is a quasi judicial process and that Ofcom could not talk about our developing thinking. We would be in listening mode.

S44

Highly sensitive

File note of meeting with 21st Century Fox (Fox), Sky and Ofcom, to discuss :

S44

Monday 27 March 2pm

Ofcom	Fox	A & O
Polly Weitzman	Gerson Zweifach	
Kevin Bakhurst	Jeff Palker	S40
Siobhan Walsh	Andrea Appella	
Tony Close		
Jane Rumble	Sky	HSF
Richard Wronka	S40	S40
Dilip Roy		
Jess Hinings		S44 S40

Polly explained that Ofcom colleagues were in the hands of the parties, and that Ofcom was there to listen. Polly explained that Ofcom is at the start of its process, and that the more fully the parties could respond to our information requests, the more helpful that would be to us, noting that where parties are not able to provide information, it may ultimately influence our recommendation.

S44

.. Polly noted that there may be some areas the parties would not want to discuss in front of one another, and said that she would leave this to them to manage during the meeting.

S44

HIGHLY SENSITIVE

Project S36 - File Note

Meeting between 21st Century Fox (Fox) and Ofcom to discuss

S44

Tuesday 18 April 2017, 13:00

Fox: Gerson Zweifach (GZ), Jeff Palker (JP), Andrea Appella

Allen & Overy (A&O): S40 , S40

Ofcom: Polly Weitzman (PW), Kevin Bakhurst (KB), Dilip Roy, Siobhan Walsh,
Tony Close (TC), Richard Wronka (RW), S40 , S40
Jess Hinings (JH), S40

S44

HIGHLY SENSITIVE

Project ~~S36~~ File Note of ~~S44~~ Meeting

Meeting between 21st Century Fox (Fox) and Ofcom to discuss ~~S44~~

Thursday, 11 May 2017, 11:30

Fox: Gerson Zweifach (GZ), Jeff Palker (JP), Andrea Appella

Allen & Overy (A&O): S40

Sky: S40

Herbert Smith Freehills: S40

Ofcom: Polly Weitzman (PW), Kevin Bakhurst (KB), Dilip Roy, Siobhan Walsh, Tony Close (TC), Richard Wronka (RW), I S40
Jane Rumble, Jess Hinings (JH), S40

KB opened the meeting by reading a prepared statement.

S44

HIGHLY SENSITIVE

Project **S6** File note of meeting with 21st Century Fox (Fox), Sky and Ofcom

Thursday 6 April 2pm

Ofcom	Fox	A & O
Kevin Bakhurst (KB)	Jeff Palker (JP)	S40
Siobhan Walsh	Andrea Appella (AA)	S40
Tony Close		
Dilip Roy (DR)	Sky	HSF
Richard Wronka (RW)	S40	S40
S40	S40	S40
S40	S40	
Jess Hinings (JH)		
S40		

S44