

Reference: 638071

21 December 2018

Julia Snape  
Information Rights  
[Information.requests@ofcom.org.uk](mailto:Information.requests@ofcom.org.uk)

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

Thank you for your recent emails to Ofcom colleagues regarding dark fibre and tax issues. A request for information within those emails has been considered under the Freedom of Information Act 2000 (the Act).

We assessed your request to be for the following and have considered it under the Act:

*Communications with Government regarding non-domestic rates in relation to the dark fibre remedy from September 2015 to 28 April 2016, the date we published our statement.*

We hold information within scope of your request. We are unable to release that information as it is exempt under Section 36 of the Act which relates to free and frank exchange of views. Section 36 exempts information from disclosure if it would, or would be likely to, inhibit the free and frank provision of advice or views for the purposes of deliberation or prejudice the effective conduct of public affairs. This is a qualified exemption and is subject to a public interest test. Broadly, this means that the information should only be withheld under the exemption where the public interest in doing so outweighs that in favour of disclosure. The public interest test is detailed in Annex B to this letter. In the letter in Annex A, Jacqui Gregory as a “qualified person” confirms that in her reasonable opinion it is not in the public interest for Ofcom to disclose the information.

Other exemptions may also apply.

If you have any queries, then please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk). Please remember to quote the reference number above in any future communications.

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.

Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Switchboard: +44 (0)20 7981 3000  
or +44 (0)300 123 3000

[www.ofcom.org.uk](http://www.ofcom.org.uk)

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:

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

**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 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, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so 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 this case.

If you have any queries about this letter, please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk).

Signed .....Jacqui Gregory.....

Date.....21 December 2018.....

Jacqui Gregory

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.

Key points:

- 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.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> <li>• Open deliberation may lead to increased trust and engagement between stakeholders and regulators.</li> <li>• The desirability of stakeholders being confident that decisions are taken on the basis of the best available information.</li> </ul>	<ul style="list-style-type: none"> <li>• Disclosure would be likely to discourage the free and frank provision of advice by Ofcom colleagues, and inhibit their free and frank exchange of views for the purposes of deliberating whether there are grounds for, and the appropriate outcome of, policy work.</li> <li>• Disclosure would also discourage the free and frank exchange of views by Government which would be to the detriment of policy development and Ofcom's ability to conduct enquiries and investigations.</li> </ul>
Reasons why public interest favours withholding information	
<ul style="list-style-type: none"> <li>• To regulate effectively, Ofcom needs to be able to undertake without prejudice rigorous and candid assessments (which includes obtaining the candid views of third parties on specific matters) and to think through all the matters at issue in an enquiry or investigation.</li> <li>• A consequence of disclosure would be that Ofcom colleagues, and other stakeholders, would be less likely to provide their advice and views freely and frankly, which would detrimentally affect the quality of advice Ofcom obtained on the evidence base for its decisions and its ability to consider the matters at issue fully.</li> <li>• A regulatory environment in which parties will provide advice and exchange views freely and openly is to be encouraged because it allows for the more effective use of limited Ofcom resources.</li> <li>• The disclosure of the information requested would not further the public interest but rather may hinder it because of the detrimental effect it would have on Ofcom's ability to consider potential breaches of regulatory law, with potentially significant consequences for companies and consumers.</li> </ul>	