

Reference: 567215

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30 August 2018

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

Thank you for your request for information where you asked about Community Radio Milton Keynes.

This was received by Ofcom on 1 August and it has been considered under the Freedom of Information Act 2000 (“the Act”).

You asked:

*Could you please supply all relevant information regarding the application for a Community FM Licence by Community Radio Milton Keynes.*

*Please include any document where this application is mentioned, minutes from all meetings where discussions of the application took place and all documents from third parties, if any.*

We are interpreting this request as referring to the application received from New City Radio on 23 October 2017. We have therefore searched for information from 23 October 2017 to 1 August 2018.

This application is mentioned in our website’s press release of 25 July 2018, under “Notes to editors”: <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/two-community-radio-licence-awards>.

A public version of New City Radio’s application is available on our website here: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/109166/New\\_City\\_Radio\\_application.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/109166/New_City_Radio_application.pdf).

An internal “For decision” paper was submitted to the licensing decision-makers for reference when considering a number of community radio licence applications including New City Radio’s. We have included a redacted version of this paper in the Annex to this letter, indicating in relation to each redaction the basis for not disclosing information (e.g. because the information is not relevant to this

request for information or because it falls under an exemption in the Act). Personal data has also been redacted in accordance with section 40 of the Act.

Please note that minutes are not generated for community radio licence awards and therefore such information is not held. However, the decision-makers agree a Statement regarding award decisions setting out their reasons and the statutory requirements relating to community radio licensing. The relevant Statement can be found on our website here:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/116437/Statement-2-community-radio-awards-July-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/116437/Statement-2-community-radio-awards-July-2018.pdf).

The decision-makers also agree a letter to each applicant not awarded a licence, which sets out the reasons for their decision. Such a letter was prepared and sent to Community Radio Milton Keynes. Correspondence with applicants is exempt under section 44 of the Act. This exemption allows information to be withheld when its disclosure is prohibited under other legislation. Section 393 of the Communications Act 2003 prevents Ofcom from disclosing information about a particular business (e.g. financial information about an applicant) unless we have the consent of that business or releasing that information helps Ofcom to carry out its duties, neither of which apply here. Section 44 is an absolute exemption under the Act and does not require a public interest test. It is likely that other exemptions would apply including the exemption set out in section 43 of the Act.

Any other relevant information (including the redacted parts of New City Radio's publicly available application and the relevant redacted parts of the internal decision paper disclosed in the Annex to this letter) was shared with us under our regulatory powers and is being withheld as it falls under the exemption in section 44 of the Act. Such information is also likely to be exempt under section 43 of the Act. However, under part 4 of the internal decision paper titled 'Annexes and background material', an extract from the Communications Market Report 2017 relating to Community Radio is available in the public domain. This can be found on our website here:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/105440/uk-radio-audio.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/105440/uk-radio-audio.pdf).

Finally, a document setting out in full the statutory requirements for licensing community radio services is being withheld as it falls under the exemption under section 42 of the Act. This part of the Act deals with exempt information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing it. Annex B to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

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,

Jerin John

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:

Jacqui Gregory  
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

Project no: Out of scope

Author: s.40

## Community radio licence applications: Round 4, batch 11

### For decision

Submitted to: Broadcast Licensing  
decision-makers

Submitted by: s.40

Project sponsor: s.40

Project director: s.40

Project manager: s.40

Date written: 28 March 2018

#### 1. Matter for decision

Colleagues with relevant delegated authority are asked to consider the following applications for the award of a community radio licence. (Please see information on frequency availability in section 3 of this paper):

Station name	Applicant company	Area to be served (from the application)
Out of scope		
New City Radio	Community Radio Milton Keynes Limited	<i>"Borough of Milton Keynes to include the urban areas of Bletchley, Newport Pagnell, Stoney Stratford and Wolverton as well as the rural areas of Hanslope Park, Sherington and Olney. A larger coverage area of 15km would allow these rural areas to feel to part of the greater Milton Keynes Community ... We are requesting a larger coverage area to also reach the unserved (sic) areas of Olney and Northern Newport Pagnell".</i>
Out of scope		

## 2. Statutory requirements

A document setting out in full the statutory requirements for licensing community radio services is available (see section 4 below; a copy will be available at the meeting). It includes characteristics of service that applicants must satisfy and matters to which Ofcom shall have regard in determining whether, or to whom, to grant a community radio licence (which are set out below):

### Characteristics of service

All applicants must satisfy the 'characteristics of service' as set out in the Community Radio Order 2004:

*(1) It is a characteristic of community radio services that they are local services provided primarily*

- (a) for the good of members of the public, or of particular communities, and*
- (b) in order to deliver social gain,*

*rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.*

*(2) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).*

*(3) It is a characteristic of every community radio service that the person providing the service –*

- (a) does not do so in order to make a financial profit by so doing, and*
- (b) uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for delivery of social gain to members of the public or the community that the service is intended to serve.*

*(4) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.*

*(5) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service makes himself accountable to the community that the service is intended to serve.*

### Matters to which Ofcom shall have regard

In determining whether, or to whom, to grant a community radio licence Ofcom shall have regard to the following matters:

#### Section 105(1)(a) – Ability to maintain service:

The ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide.

#### Section 105(1)(b) – Catering for the tastes and interests of the relevant community:

The extent to which any such proposed service would cater for the tastes and interests of persons

comprising the relevant community, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests.

Section 105(1)(c) – Broadening of choice and distinctiveness from overlapped services:

The extent to which any proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality in which it would be provided, and, in particular, the extent to which the service would be of a nature or have a content distinct from that of any other local service the licence for which would overlap with the licence for the proposed service.

Section 105(1)(d) – Evidence of demand or support:

The extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.

Section 105 (1)(e) – Extent of social gain:

The extent to which the provision of any such proposed service would result in the delivery of social gain to the public or relevant community.

Section 105(1)(f) – Accountability to the community:

The provision that each of the applicants proposes to make in order to render himself accountable to the relevant community in respect of the provision of the proposed service.

Section 105(1)(g) – Access and training in the use of the facilities:

The provision each of the applicants proposes to make to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities.

### 3. Additional information

#### Overlapping existing radio services

For commercial radio coverage maps and Formats please use the following link:

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/analogue-main.htm>

For community radio key commitments in full and coverage maps please use the following link:

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/community-main.htm>

Out of scope

Deen FM and New City Radio: will overlap with Heart Milton Keynes, and two community radio station already serving Milton Keynes: MKFM and Secklow Sounds.

MKFM, description of character of service, taken from key commitments (KCs): *“MKFM is for the people who live or work in Milton Keynes and surrounding villages. It provides a proudly local, mainstream community radio service, which promotes and supports the work of local charities and community groups and helps local businesses, musicians and sports teams. It encourages social*

*cohesion by ensuring content is balanced, and it provides opportunities for volunteers, and training for community members.”*

Secklow Sounds, description of character of service, taken from KCs: *“Secklow Sounds is a radio service for people in Milton Keynes, and particularly the disadvantaged, and those from diverse backgrounds. It gives a platform to local emerging music and arts, and promotes the voluntary sector”.*

Out of scope

### **Economic impact considerations**

A full economic impact assessment has been carried out in relation to Out of scope  
Out of scope . It is circulated alongside this paper. None of the other applications gave rise to any economic impact concerns, and so full economic impact assessments have not been carried out in relation to them.

### **Frequency availability & coverage issues**

Out of scope There is only  
**one suitable FM frequency** available for Milton Keynes. Maps of (noise-limited) predicted coverage for each applicant (based on the application transmitter site in each case) are available. Out of scope  
Out of scope the two for Milton Keynes are in the folder [here](#).

## **4. Annexes and background material**

A copy of each application under consideration is on file here along with:

- Relevant correspondence: clarifications sought and received; s.44  
s.44
- An economic impact assessment in relation to Out of scope
- A document setting out in full the statutory requirements for licensing community radio services;
- An extract from CMR 2017 relating to community radio; and
- A map showing the approximate location of each applicant for a community radio licence in the second phase of our fourth round of licensing.

## Annex B

<b>Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.</b>	
<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"><li>• Open policy making and public confidence in regulated activities.</li></ul>	<ul style="list-style-type: none"><li>• Ofcom considers the request which includes internal legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings. It is advice given by Ofcom’s own salaried in-house legal advisers and is connected with the giving or obtaining of legal advice.</li></ul>
<b>Reasons why public interest favours withholding information</b>	
<ul style="list-style-type: none"><li>• It is in the public interest that awarding of Community Radio licensing decisions by Ofcom are taken in a fully informed legal context, where relevant. Ofcom therefore needs high quality effectively obtained legal advice for the effective conduct of its business. That advice needs to be given in context, and with a full appreciation of the facts. It needs to be sought and given in a timely fashion to ensure that policy develops in a fully informed way.</li><li>• Legal advice cannot be effectively obtained unless Ofcom is able to put all the facts before its in-house legal advisers without fear that they may afterwards be disclosed and used to its prejudice. Without such effectively obtained advice, the quality of Ofcom’s decision making would be much reduced because it would not be fully informed and this would be contrary to the public interest.</li></ul>	