

Reference: 1-164885145

7 January 2011

[X]

ELEANOR BERG
Information requests

information.requests@ofcom.org.uk

Dear [X],

Freedom of Information: Right to know request

I refer to your letter of 23 December 2010, our reply of the same date, and your colleague Suzanne Rab's email of 27 December 2010. We have considered your request for information under the Freedom of Information Act 2000 ('the Act').

You asked for:

"Any dealing or communication between Ofcom and UK Department for Business, Innovation and Skills ('BIS') in relation to the European intervention notice and the process of preparing the report that Ofcom is required to prepare by 31 December."

As previously stated, Ofcom has had various discussions with BIS about process and practical issues about the intervention notice, for example, concerning the timing, delivery and confidentiality of our report. These discussions have been by email and telephone.

I am writing to confirm that Ofcom has now completed its search and I enclose a copy of the information you requested. This includes emails and file notes relating to telephone conversations between Ofcom and BIS.

Please note that some of the information you have requested has been withheld as it falls under one or more of the following exemptions in the Act.

Section 40 of the Act, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

Section 42 of the Act. This part of the Act deals with the exemption of 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 the information. **Annex A** sets out the

exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

Section 44 of the Act. Under this section information which we hold on this subject is exempt from disclosure since it was shared with us under our regulatory power and disclosure is prohibited under Part 9 of the Enterprise Act 2002. Section 44 is an absolute exemption under the Act and does not require a public interest test.

Other exemptions may apply.

Please ensure that when using the provided information in any way, you comply with all relevant legislation. For example, the information provided may be protected by copyright under the Copyright, Designs and Patents Act 1988 (as amended). If in doubt, please seek independent legal advice. For Ofcom's policy on copyright and related issues, please refer to <http://www.ofcom.org.uk/disclaimer/>.

Yours sincerely

Eleanor Berg

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:

Graham Howell
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

Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

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"> • Ofcom considers the request for legal advice is a request for information of which a claim to legal professional privilege could be maintained in legal proceedings. • The public interest in maintaining the confidentiality of privileged communications is particularly strong. • There is little public interest in the topic to which the privileged communications relate, albeit that the public interest in the PIT test generally is very high. • The legal advice is current.

Reasons why public interest favours withholding information

- It is in the public interest that decisions taken by Ofcom and, where relevant, its sponsoring departments, are taken in a fully informed legal context. Ofcom and, where relevant, its sponsoring departments, therefore need high quality effectively obtained legal advice for the effective conduct of their businesses.
- Legal advice cannot be effectively obtained unless Ofcom and, where relevant, its sponsoring departments, are able to put all the facts before their in-house legal advisers and receive advice without fear that the communications may afterwards be disclosed and used to their 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.