

Reference: 01667265

Information Requests
information.requests@ofcom.org.uk

6 October 2023

Freedom of Information request: Right to know request

Thank you for your request concerning correspondence from the Government regarding the postal universal service obligation. Your request was received on 5 September 2023 and we have considered it under the Freedom of Information Act 2000 ('the FOI Act').

Your request

Please can you disclose, preferably by PDF, a copy of any correspondence received from the Government in or since September 2022 relating to the postal service universal service obligation.

Our response

We can confirm that we do hold correspondence within the scope of your request.

However, we consider the correspondence to fall under the following categories:

1. There are a limited number of emails between Ofcom and the Government containing the development of ideas and thoughts, and some relate to our website announcement which was published on 5 September 2023 – please see [here](#). However, we consider that these emails are exempt from disclosure under section 36(2)(b)(ii) of the FOI Act as they relate to information held by a public authority that if disclosed:
 - would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberationIn applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. I have attached a letter from the qualified person for Ofcom (the Corporation Secretary) confirming that this exemption applies to the correspondence falling within the scope of your request (see Annex A) and a table setting out the factors Ofcom considered when deciding where the public interest lay (see Annex B).
2. There are a limited number of letters and emails received from the Government obtained as a result of our postal functions relating to the affairs of a particular business. We consider these emails to be exempt under Section 44 of the FOI Act.

Section 44 of the FOI Act prohibits disclosure if it is prohibited by or under any enactment. In this instance, disclosure of such information is prohibited under section 56 of the Postal Services Act 2011. Section 56 of the Postal Services Act 2011 prevents us from disclosing information that we have obtained, which relates to the affairs of a particular business (so long as the business is being carried on), unless we have the consent of that business or one of the other gateways for disclosure in section 56(2) of the Postal Services Act 2011 applies, neither of which apply here. Section 44 is an absolute exemption under the FOI Act and does not require a public interest test.

3. There is one email which we consider to be partially exempt under section 36 and section 44 of the FOI Act (as explained above) and additionally section 40 of the FOI Act. Section 40 provides that personal information about persons other than the requester is exempt where, among other things, its disclosure would contravene any of the data protection principles in the UK General Data Protection Regulation and the Data Protection Act 2018. Section 40 is an absolute exemption under the Act and does not require a public interest test. This email has been attached.

- An email from Government to Ofcom dated 30 August 2023

Other exemptions such as [section 43](#) of the FOI Act may also be applicable to some of the items identified in (2).

If you have any further queries, then please send them to information.requests@ofcom.org.uk quoting the reference number above in any future communications.

Yours sincerely

Information Requests

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law, you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

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 responding to 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 information.requests@ofcom.org.uk

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. Further information about this, and the internal review process can be found on the Information Commissioner's Office [here](#). Alternatively, 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

Some information we hold that falls within the scope of your request is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act 2000 (the Act). I am a "qualified person" as referred to section 36(2) of the Act and duly authorised by a Minister of the Crown for the purposes of that section.

In my reasonable opinion, disclosure of the information requested that we have identified as falling under the the exemption in section 36 of the Act **would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.** 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 his letter, please contact information.requests@ofcom.org.uk.

Date: 6 October 2023

Corporation Secretary

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.
- In this case, it is considered that disclosure would:
 - inhibit the free and frank exchange of views for the purposes of deliberation, and
- The application of section 36 is subject to a public interest balancing test.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Transparency of Ofcom's engagement with Government especially in relation to matters that relate to the areas Ofcom regulates. This may lead to greater awareness of how Ofcom works as a regulator and how it performs its duties. • The general desirability that Ofcom's activities as the UK's communications regulator are transparent. 	<ul style="list-style-type: none"> • Ofcom needs to be able to engage with Government in an informal manner, to discuss matters at a high level inside and outside the scope of regulatory action. This type of engagement allows Ofcom to build relationships with all types of stakeholders. The threat of disclosure of information from these types of engagement would likely discourage the building of such relationships and would therefore have an adverse effect on Ofcom's ability to effectively carry out its functions. • Releasing such information to the public about these discussions, would not only inhibit the free and frank exchange of views internally and externally, but would also likely inhibit Ofcom's ability to work in a collaborative way in the future with Government.

Reasons why the public interest favours withholding information
<ul style="list-style-type: none">• Ofcom, as the communications regulator and forthcoming Online Safety regulator, needs to freely engage with the Government where appropriate, to share views and expertise on matters relating to the development of relevant policy or legislation. We consider that on balance the importance of transparency on these matters is outweighed in this case by the need for Ofcom and the Government to effectively engage on matters in relation to the postal sector of which Ofcom regulates, and therefore disclosure would be contrary to the public interest.• Ofcom needs to have the ability to form relationships with the Government, and to freely communicate the results of such engagements internally. Disclosure would likely result in Ofcom colleagues and the Government with which they engage with being less open to sharing views and engaging in valuable, informal discussions.