

Reference: 2151038

Information Requests

information.requests@ofcom.org.uk

27 March 2026

Freedom of Information request: Right to know request

Thank you for your request for information about correspondence regarding the High Court's ruling in the case stated below.

We received this request on 12 February 2026 and we have considered it under the Freedom of Information Act 2000 ('the FOI Act'). We wrote to you on 12 March 2026, explaining that we needed more time to consider where the public interest lay in withholding or disclosing the information requested. We have now concluded our consideration.

Your request and our response

I am writing to request information under the Freedom of Information Act 2000. Please provide copies of any correspondence between Ofcom officials or between officials, ministers or representatives from the Department for Culture, Media and Sport and Ofcom regarding the UK Supreme Court's ruling in For Women Scotland v The Scottish Ministers. For the purposes of this request, "correspondence" should be taken to include (but not be limited to) letters, emails, meeting notes, minutes, or records of phone calls and discussions.

To narrow the scope of the request, this should cover the period from 16 April 2025 to 30 June 2025. I look forward to your response within the statutory 20 working days.

We have searched for the information requested and can confirm we hold information in scope of this.

We hold an email we were copied into by DCMS, dated 29 April 2025, about parliamentary questions and one of the questions stated in this was:

"..To ask the Secretary of State for Culture, Media and Sport, with reference to the Supreme Court ruling published on April 16, what plans her Department has to amend its policy on the use of women-only spaces in its buildings by transgender women."

We were only copied into the email and did not respond.

While we hold further information that is in scope of your request, e.g. a briefing to Ofcom's CEO that mentions the case, an email from a journalist that relates to the case, a meeting invite email attaching the journalist's email and a legal advice note, this information is being withheld as it is exempt from disclosure under sections 36(2)(c), section 44 and 42(1) of the FOI Act.

Section 36(2)(c) of the FOI Act provides that information held by a public authority is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure of the information:

- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36 is a qualified exemption, which means that Ofcom is required to consider whether or not the public interest in disclosing the information you have requested outweighs the public interest in withholding the information. In this case, we consider that the public interest favours withholding the information for the reasons set out in **Annex B** to this letter. In **Annex A** of this letter, the qualified person, the Corporation Secretary for Ofcom, has confirmed that the exemption applies.

We consider that the advice note is exempt from disclosure under section 42(1) of the FOI Act. This 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. The attached **Annex C** to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

We also consider that other exemptions under the FOI Act, such as section 44 may be applicable to the information held in scope.

Yours sincerely,

Information Requests

Annex A

Freedom of Information: Right to know request

Section 36 exemption

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 relevant information requested would prejudice the effective conduct of public affairs.

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.

Corporation Secretary

Date: 27 March 2026

Annex B

Section 36: Prejudice to effective conduct of public affairs

Section 36 exempts information whose disclosure would, or would be likely to, 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 prejudice the effective conduct of public affairs
- The application of section 36 is subject to a public interest balance.

Factors for disclosure

- Ofcom recognises that its approach to its duties is a matter of interest to the wider public. Releasing such information could be said to increase transparency in our work and allow for discussion in a public forum.

Factors for withholding

- In order to fulfil its regulatory functions effectively, stakeholders need to be able to contact us about matters that may affect the areas we regulate and also Ofcom colleagues need to have the space to be able to engage internally in frank discussions and exchange views or commentary and provide these views or commentary to colleagues, including senior colleagues.
- Given the above, disclosing such communications would likely prejudice the effective conduct of public affairs.

Reasons why public interest favours withholding information

- At this time, Ofcom is withholding the requested information as we consider that the public interest in withholding the information in this case outweighs the public interest in disclosure.
- This is because the disclosure of this information is likely to prejudice the effective conduct of public affairs. Disclosure of such information would likely affect Ofcom's employees' ability to freely engage with colleagues, including senior staff, and give them updates on policy thinking or comments on matters the public are discussing. It would also likely make stakeholders more cautious when engaging with us if they believe we may disclose what they tell us.
- Whilst there may be some weight attached to the public interest in disclosing to enable the public to understand how Ofcom is carrying out its functions, we consider that significant prejudice would be caused by such a disclosure.

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 that the request includes 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. • Disclosure of this advice might undermine Ofcom’s ability to obtain candid legal advice in the future, as lawyers and clients may feel constrained in their communications if there is a risk of disclosure. This in turn would likely affect the effectiveness of Ofcom’s decision-making, which relies on the ability to receive unreserved and clear legal guidance.
<p>Reasons why public interest favours withholding information</p>	
<ul style="list-style-type: none"> • We consider there is a significant weight afforded to preserving legal professional privilege, and the importance of Ofcom being able to obtain and rely on confidential legal advice, and therefore consider that the public interest here favours withholding disclosure. 	

If you are unhappy with the response you have received to your request for information, or think that your request was refused without a reason valid under the law, you may ask for an internal review. If you do, it will be subject to an independent review within Ofcom. We will either uphold the original decision, or reverse or modify it.

If you would like to ask us to carry out an internal review, you should get in touch within two months of the date of this letter. There is no statutory deadline for us to complete our internal review, and the time it takes will depend on the complexity of the request. But we will try to complete the review within 20 working days (or no more than 40 working days in exceptional cases) and keep you informed of our progress. Please email the Information Requests team (information.requests@ofcom.org.uk) to request an internal review.

Taking it further

If you are unhappy with the outcome of our internal review, then you have the right to [complain to the Information Commissioner's Office](#).