Reference: 02294461

Information Requests
information.requests@ofcom.org.uk

29 October 2026

Freedom of Information request: Right to know request

Thank you for your request for information about certain engagement between Ofcom and Everyone TV regarding prominence and local TV.

We received this request on 1 October 2026 and we have considered your request under the Freedom of Information Act 2000 ("the FOI Act").

Your request

LTVN requests copies of, or in the alternative a schedule identifying with dates, of the following information held by Ofcom:

1. all meetings, calls, or other engagements (however described, including any regular or ad hoc liaison meetings) between Ofcom and Everyone TV or any of their Members or representatives, at which the geographic scope of local TV simulcast services' entitlement to appropriate prominence, or the definition of geographical boundaries for local TV services on Freely (or any other non-DTT or IP-delivered platform), was discussed, together with any agendas, minutes, notes, or other records of those meetings;

2. all correspondence (including letters, emails, and any other written communications) passing between Ofcom and Everyone TV, or any of their Members or representatives, concerning whether a local TV simulcast service is entitled to appropriate prominence when carried outside its DTT coverage area; and

3. any internal Ofcom advice, briefing, analysis, or correspondence considering or addressing the question of whether local TV services' entitlement to appropriate prominence extends beyond their DTT coverage area on IP-delivered or other non DTT platforms.

This request covers the period from 1 January 2022 to the date of Ofcom's response, reflecting the period in which Freely and its predecessor propositions have been in active development, but LTVN would welcome disclosure of any earlier material Ofcom considers relevant. If Ofcom holds

no information falling within any of the above categories, LTVN asks that Ofcom confirm this in its response, specifying which category or categories that confirmation relates to. LTVN recognises that Ofcom may wish to consider whether any exemptions under FOIA apply to some or all of the requested information. LTVN would welcome early engagement on the scope of this request if Ofcom considers it to be unclear or unreasonably broad, rather than a refusal without such engagement, given the regulatory importance of the underlying issue to a live consultation with a response deadline of 1 September 2026 which has now passed and on which Everyone TV is planning to publish its statement.

Our response

For some context, the code on Electronic Programme Guides sets out the practices to be followed by EPG providers to give appropriate prominence for public service channels, to provide the features and information needed to enable EPGs to be used by people with disabilities and to secure fair and effective competition. The Code was reviewed in 2018, when we considered prominence for public service broadcasting and the statement setting out the changes was published on our website.

Turning to your request, we have searched our records for information falling from 1 January 2022 to the date of your request.

Regarding questions one and two, we are unable to confirm nor deny whether we hold the information you requested. By virtue of section 44(2) of the FOI Act, the duty to confirm or deny holding information does not arise if the confirmation or denial that would be given in itself reveals information that falls under the exemption in section 44(1) of the FOI Act. Section 44(1) of the FOI Act provides that information is exempt from disclosure if its disclosure is prohibited by or under any enactment.

In this case, disclosure is prohibited under section 393 of the Communications Act 2003 ('the Communications Act') which prohibits the disclosure of information with respect to a particular business (such as Everyone TV) which we have obtained in the course of exercising a power conferred by certain legislations including the Broadcasting Act 1990 and Broadcasting Act 1996, unless we have the consent of those businesses or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which applies here. Section 44 is an absolute exemption and therefore is not subject to a public interest test.

We also consider other exemptions under the FOI Act such as section 36 (prejudice to the effective conduct of public affairs) and section 43 (commercial interests) may be engaged in relation to this material.

Regarding question three, we can confirm that we hold information in response to this request, however we consider this information is exempt from disclosure.

In particular, we hold an email exchange between Ofcom lawyers but consider this exempt from disclosure under section 42 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. Annex A, attached 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 hold email exchanges within the team that arguably fall under question three but consider these exempt from disclosure under section 36 of the FOI Act. In particular, section 36(2)(b)(ii) and (c) of the FOI Act which provide 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, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; and
- 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 C to this letter. In Annex B of this letter, the qualified person, the Corporation Secretary for Ofcom, has confirmed that the exemption applies.

Yours sincerely,

Information Requests

Request an internal review
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.

Annex A

<table>
<tr><th colspan="2">Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.</th></tr>
<tr><th>Factors for disclosure</th><th>Factors for withholding</th></tr>
<tr><td>Ofcom recognises local TV prominence 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.</td><td>The documentation in relation to which the exemption is claimed reflects advice for staff on the EPG Code.
This email contains internal discussions which is subject to legal professional privilege, as the information was made for the purpose of providing or obtaining legal advice about the code.
It is advice discussion by Ofcom’s own salaried in-house legal advisers and is connected with the giving or obtaining of legal advice.</td></tr>
<tr><th colspan="2">Reasons why public interest favours withholding information</th></tr>
<tr><td colspan="2">It is in the public interest that decisions taken by Ofcom in relation to policy development, enforcement, and litigation 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 freely and in a timely fashion to ensure that policy develops in a fully informed way.</td></tr>
</table>

Annex B

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, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; and/or
- would otherwise prejudice, or would be likely otherwise to 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 C the exemption in full, as well as the factors I considered when deciding where the public interest lay in relation to the information concerned.

Corporation Secretary

Date: 29 October 2026

Annex C

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 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.
- would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; and/or
- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- The application of section 36 is subject to a public interest balance.

Factors for disclosure	Factors for withholding
• Ofcom recognises local TV prominence might be 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.	• The documentation in relation to which the exemption is claimed reflects internal discussions on local TV prominence and the EPG code. • We consider it is in the public interest for Ofcom staff to have a safe space in which to discuss, test and exchange views on regulatory issues, including the interpretation of statutory and regulatory provisions. Disclosure of such discussions would be likely to inhibit the free and frank exchange of views in the future and may affect staff's willingness to freely explore options, challenge assumptions and have candid discussions about policy positions. • This may in term affect the development of well-reasoned and robust regulatory positions. • Given the above, disclosing such communications would also likely prejudice the effective conduct of public affairs.

Reasons why public interest favours withholding information

- We consider that on balance the public interest in withholding the information requested outweighs the public interest in disclosure.
- This is because the disclosure of this information is likely to prejudice the effective conduct of public affairs, and would also likely affect Ofcom staff's ability to freely and effectively deliberate on and discuss regulatory matters.