

Reference: 01708119

Information Requests
information.requests@ofcom.org.uk

21 December 2023

Freedom of Information request: Right to know request

Thank you for your request for information concerning compliance with General Condition A3.2(b) on 999 calls during power outages. This request was received on 31 October 2023 and we have considered it under the Freedom of Information Act 2000 (the "FOI Act"). We wrote to you on 24 November to say we needed more time to consider the public interest in releasing or withholding the information – we have now concluded this.

Your request & our response

In January 2023, [-] of Ofcom, in a FOI response, said:

"Ofcom has also recently opened an own-initiative compliance monitoring programme to assess compliance by regulated providers with General Condition A3.2(b) with particular reference to the guidance. This programme is currently ongoing, and we will publish further information in due course."

[A3.2(b) says that "Regulated Providers must take all necessary measures to ensure:" ... "uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered"]

What information has Ofcom published from this programme?

We have published information in Ofcom's Enforcement Bulletin here: '[Compliance monitoring programme into access to emergency services during power outages](#)'. This includes an [open letter](#) to all communication providers to remind them of their responsibilities and obligations under GCA3.2(b) and GCA3.3.

What is the timetable for further publication?

The monitoring programme is closed and we will not be publishing anything further in respect of this programme and its findings.

I would like to see any information that has been processed, but not yet published, that has been used by Ofcom to judge how well General Condition A3.2(b) is being met.

In July 2023, we opened our compliance monitoring programme into access to emergency services during power outages. This programme was aimed at looking at how CPs are meeting their obligations under General Conditions A3.2(b) for those customers using voice communications services that are delivered over broadband, and what solutions are in place to provide access to emergency services in the event of a power cut at a customer's home or premises. We have provided a link above to the enforcement bulletin that provides an update on this monitoring programme. As explained in the bulletin, we did not identify any significant compliance concerns which we considered required formal investigation. In a number of instances, our engagement with providers resulted in improvements being made to the measures they are taking to protect their customers.

As part of this programme, we gathered information from various providers to help inform our assessment. Colleagues created earlier drafts of our thinking which informed the final assessment. We therefore hold information in scope of this question however this information is being withheld as we consider it is exempt from disclosure under sections 44 and 36(2) of the FOI Act – we set out the specific provisions below.

Section 44(1)(a) of the FOI Act exempts the disclosure of information where disclosure is prohibited by another enactment. In this case, we are prohibited under section 393 of the Communications Act 2003 from disclosing information which relates to a business (such as information about providers), which we have obtained in exercising our powers, unless we have the consent of that business or one of the statutory gateways for disclosure under section 393(2) of the Communications Act 2003 is met, neither of which applies here. Section 44 of the FOI Act is an absolute exemption and does not require a public interest test.

Section 36(2)(b)(ii) and (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, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation
- 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 other exemptions may also be applicable here including section 42 of the FOI Act.

I would like to know Ofcom's judgement of how well General Condition A3.2(b) is being met, specifically:

Does Ofcom consider that adherence is good enough for the national rollout of the conversion of exchange-powered PSTN landlines to be safe to proceed at this point?

If the adherence is anything short of "very well", what is Ofcom doing (or planning to do) to change this?

The programme did not identify any significant compliance concerns which we consider require formal investigation. However, Ofcom is closely monitoring the switchover and should we receive intelligence or other information to suggest providers are not acting in compliance with the requirements, we are ready to hold those providers to account.

I hope this information is helpful. 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 5A

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.

Signed: Corporation Secretary

Date: 21 December 2023

Annex B

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

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • The general desirability that Ofcom's activities as the UK's communications regulator are transparent. • Public interest in understanding what information was taken into account by Ofcom when reaching their views on the general compliance of General Condition A3.2(b) 	<ul style="list-style-type: none"> • The documents being withheld were drafted by project colleagues to facilitate discussions with the decision makers on the project (such as directors) ahead of settling the final position. While these working documents contain proposed findings, views and recommendations on the matter, they do not necessarily contain Ofcom's final position on the matter as the decision makers' views would not have been contained in the documents. Disclosing these documents might therefore provide a distorted view of Ofcom's final position. • In order for Ofcom to carry out its functions as a regulator, colleagues need to be able to engage internally in frank discussions and exchange advice/opinions/recommendations, in order for robust decisions to be made. The disclosure of information about such discussions would have a chilling effect as this would or would be likely to inhibit free and frank discussions in the future and this in turn would likely damage the quality of

	<p>deliberation and lead to less robust decision making.</p> <ul style="list-style-type: none"> Given the above and the fact that colleagues need to be able to analyse findings and give their opinions to other staff members or decision makers on the relevant projects, disclosing such communications would also likely prejudice the effective conduct of public affairs.
<p>Reasons why public interest favours withholding information</p>	
<ul style="list-style-type: none"> We consider that the public interest in disclosing the information requested does not outweigh the public interest in withholding disclosure. Ofcom has published its conclusions regarding the Compliance monitoring programme thereby giving the public an update on this matter. We consider that the importance of transparency in relation to the remainder of the information is outweighed by the need for Ofcom to effectively engage internally on matters relating to the areas it regulates/monitors and for Ofcom colleagues to have a space to analyse findings and develop or exchange views. 	