

Reference: 01717476

Information Requests  
[information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)

12 December 2023

## Freedom of Information request: Right to know request

Thank you for your request for information, as detailed below, which we received on 14 November 2023 and which we have considered under the Freedom of Information Act 2000 ('the FOI Act').

### Your request and our response

#### **Question 5(iv) of the September Requests:**

*In response to Request 5(iv) of the September Requests, Ofcom state that they do not hold in searchable format information which confirms the percentage of complaints from lobby groups/political activists/pressure groups/groups affiliated to a political party. Please see immediately below a revised version of Request 5(iv) which we consider will assist Ofcom's ability to respond:*

**Please state the percentage of complaints from the following groups:**

- (i) 38 Degrees;**
- (ii) the Green Party;**
- (iii) Conscious Advertising Network;**
- (iv) Stop Funding Hate;**
- (v) Voice of the Listener and Viewer; and**
- (vi) Led by Donkeys Ltd.**

We do not hold this information in a searchable format as complaints are logged by the name of the individual complainant, not by any organisation they may be representing. In any event, please note that any information falling within scope of this request would be likely to be exempt under section 44 of the FOI Act. Section 44 exempts the disclosure of information which is prohibited by another enactment. In this case, we are prohibited under section 393 of the Communications Act 2003 ('the 2003 Act') from disclosing information which relates to a business (including in this case the relevant broadcasters), which we have obtained in exercising our powers in relation to broadcast standards complaints, unless we have the consent of that business or one of the statutory gateways for disclosure under section 393(2) of the 2003 Act is met, neither of which applies here. Section 44 is an absolute exemption and does not require a public interest test.

#### **Request 6 of the September Requests:**

*In response to Request 6 of the September Requests, Ofcom limited its response to Ofcom's Communications team and stated that no internal guidance is held by Ofcom in respect of*

*communications with the press and third parties in respect of (i) complaints received; (ii) Ongoing investigations; (iii) Preliminary Views; and (iv) Decisions.*

*The response further states that Ofcom has “robust sign off processes for all external communications activity, and we operate in accordance with our published procedures on investigating breaches of content standards.” Request 6 was clearly not limited to Ofcom’s Communication Team, but to officers of Ofcom in all departments.*

***Please provide:***

***(i) Either a description or document/s including but not limited to internal memos, emails or guidance of the “robust sign-off procedure” referenced in Ofcom’s response to Request 6;***

External communications materials related to Ofcom’s broadcasting standards work are subject to review and sign-off by the relevant Director/s in the Standards and Audience Protection and Legal teams.

***(ii) a response to Request 6 of the FOI Requests which includes any internal guidance, since January 2022, in respect of Ofcom communications that were made outside of Ofcom’s Communications Team with the press and third parties in respect of the Question 6 Categories.***

We do not hold any such documents.

***Response 8 of the September Requests:***

*In response to Request 8 of the September Requests, Ofcom has withheld Content Board minutes for meetings that took place in May, July and October of this year (the “182nd to 184th Meetings”) asserting an exemption under section 22 of the FOI Act.*

***Please confirm:***

***(i) The length of time that it takes Ofcom to produce the Content Board minutes by reference to the six final meeting minutes that were produced in 2022; and***

We explained the process for approving and publishing Content Board minutes in our response to question 8 of the September Request, namely that Content Board meets six times a year and minutes are approved at the following meeting and then published.

Content Board minutes are usually published in batches following approval. In 2022, the average length of time between minutes being approved as final and their publication was approximately four months.

In terms of the minutes for recent Content Board meetings held in 2023:

- the minutes for the 182<sup>nd</sup> meeting, held on 2 May 2023, were published on the Ofcom website on 30 August 2023;
- the minutes for the 183<sup>rd</sup> meeting, held on 4 July 2023, were approved on 3 October 2023 and will be published shortly;
- the minutes for the 184<sup>th</sup> meeting, held on 3 October 2023, were approved on 21 November 2023 and will be published shortly.

The dates that Content Board minutes have been published are available on the Ofcom website<sup>1</sup>.

***(ii) Whether the unredacted versions of the Minutes of the Ofcom Content Board Meetings for the 182nd to 184th Meetings include information pertaining to GBNews that Ofcom intend to redact before publication. We are further considering this request and ask that you preserve the original unredacted minutes.***

The minutes of the 182<sup>nd</sup> meeting (which have been published on the Ofcom website<sup>2</sup>) refer to GB News at paragraph 13: “It was noted that a standards investigation had been launched into a broadcast by GB News over a possible breach of due impartiality rules.” The broadcast referred to was *Saturday Morning with Esther and Philip*, GB News, 11 March 2023, 10:00. This investigation subsequently found the broadcast to be in breach of the due impartiality rules<sup>3</sup>.

The minutes of the 183<sup>rd</sup> meeting (which are yet to be published) refer to GB News at paragraph 12: “It was noted that the previous day Ofcom had announced investigations into a programme on GB News under Ofcom’s rule which prevent politicians acting as newsreaders in news programmes”<sup>4</sup>. We do not intend to redact any information regarding GB News from these minutes before publication.

The minutes of 184<sup>th</sup> meeting (which are also yet to be published) make no reference to GB News.

***Request 9 of the September Requests:***

*Ofcom has failed to respond to Question 9 of the September Requests, notwithstanding the further clarification that was provided on 24 and 26 October 2023. The exemption that you now rely on is that the request is excessive and would take 18 hours to administer. In particular, you have cited that meetings with ‘other broadcasters’ would be too onerous. The time period is only over approximately a 6-month period and is based on information that should be readily available. There should be a record of the groups that Ofcom has met in its regulatory capacity.*

***(i) Please now respond to this request as soon as possible omitting the category ‘other broadcasters’, but with the inclusion of ‘political parties’, ‘lobby groups’, and ‘campaigning organisation/companies’ (the “Request 9 Groups”), to confirm:***

***(a) the number of meetings that were held between Ofcom and each category specified within the Request 9 Groups during the relevant 6-month period;***

***(b) the organisations specified within the Request 9 Groups that such meetings were held with; and***

***(c) the date of any such meetings that are responsive to (a) above.***

***(ii) In terms of the press, please confirm whether meetings have been held***

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<sup>1</sup> <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/content-board>

<sup>2</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0040/266989/content-board-minutes-182-23-2may2023.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0040/266989/content-board-minutes-182-23-2may2023.pdf)

<sup>3</sup> See <https://www.ofcom.org.uk/news-centre/2023/ofcom-finds-gb-news-in-breach-of-due-impartiality-rules#:~:text=An%20Ofcom%20investigation%20has%20today,2023%2C%20breached%20due%20impartiality%20rules>

<sup>4</sup> See <https://www.ofcom.org.uk/news-centre/2023/new-investigations-into-gb-news-and-talk-tv>

**between the press and Ofcom during the relevant 6-month period;**  
**(iii) In circumstances that meetings have been held between the Ofcom and the press during this 6-month period, please confirm approximately how many meetings have been held; and**  
**(iv) If meetings may have been held in an informal capacity that may not have been recorded.**

This request is very wide. Ofcom's statutory remit extends over a broad range of sectors, including broadcasting, telecoms, spectrum, post and online safety. Ofcom has over 1,350 employees which meet with an extremely wide range of individuals and organisations across a broad range of issues on a daily basis.

We are therefore unable to process your request as the information is not readily accessible as a considerable amount of time would be needed to locate, retrieve, identify and extract any relevant information. Under section 12 of the FOI Act, public bodies are not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit". The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, and is, for Ofcom, £450. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, identifying, locating, retrieving and extracting the information from any document containing it. The Regulations provide that costs are to be estimated at a rate of £25 per person per hour. Ofcom estimates that it would take at least 18 hours to identify, locate and extract the information you require and as such the cost of complying with your request will exceed the appropriate limit.

We would be happy to consider a narrowed request.

#### **Requests 16 to 18 of the September Requests**

*In response to Requests 16 to 18 of the September Requests, Ofcom refers to the guidance provided for Rule 5.1 which states that just "because material is broadcast on a 'rolling news' channel does not necessarily mean that the material would be characterised as 'news' content". Ofcom's response to Request 17 goes on further to state that "Rule 5.1 relates to due accuracy and due impartiality in news and does not apply to non-news or "current affairs" content". In respect of Request 18, Ofcom states that Rule 5.1 relates to due accuracy and due impartiality in news and "does not apply to non-news of "current affairs" content."*  
*We consider this to be a misunderstanding of Requests 16 to 18 of the September Requests. We are asking Ofcom to identify circumstances where current affairs programmes are or have been investigated because Ofcom consider that they may contain news content in breach of Rule 5.1. With this in mind please confirm;*

**(i) How many current affairs programmes are currently being investigated for breaches under Rule 5.1; and**

Please find below a list of all open broadcast standards investigations where we have asked for comments from the relevant broadcaster on compliance with Rule 5.1.

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>
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The Mid-Day Show	Coast and County Radio	25/04/2023
Jacob Rees-Mogg's State of the Nation	GB News	09/05/2023
Jacob Rees-Mogg's State of the Nation	GB News	13/06/2023
Friday Morning with Esther and Philip	GB News	12/05/2023
Saturday Morning with Esther and Philip	GB News	13/05/2023
Friday Morning with Esther and Philip	GB News	23/06/2023
News	Greatest Hits Radio	13/04/2023
News	Greatest Hits Radio	14/04/2023
News	Greatest Hits Radio	17/04/2023
News	Greatest Hits Radio	21/04/2023
The Live Desk	GB News	17/08/2023
Good Morning Britain	ITV1	13/09/2023

***(ii) How many current affairs programmes have been investigated for breaches under Rule 5.1 over the last 12 months.***

There have been no further programmes beyond those listed in our response to the previous question.

***Request 19 of the September Requests:***

*In response to Request 19 of the September Requests, you have stated that Ofcom does not hold information in respect of its original internal guidelines as to the definition of “news”, and also, in the context of Rule 5.1, “news, in whatever form”.*

***Please confirm:***

***(i) Why Ofcom does not hold the information requested within Request 19 of the FOI Requests; and***

***(ii) What happened to the information requested within Request 19 of the FOI Requests.***

***Request 20 of the September Requests:***

*In response to Request 20 of the September Requests, you have stated that Ofcom does not hold information in respect of its existing internal guidelines as to the definition of “news”, and also, in the context of Rule 5.1, “news, in whatever form”.*

***Please confirm:***

***(i) Why Ofcom does not hold the information requested within Request 20 of the FOI Requests; and***

***(ii) What happened to the information requested within Request 20 of the FOI Requests.***

We do not hold any internal guidelines as to the definition of “news”, and also, in the context of Rule 5.1, “news, in whatever form”, and we never have held any such guidelines.

Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable and consistent, among other things (see section 3(3) of the 2003 Act). Accordingly, and as your client will be aware, Ofcom publishes non-binding Guidance to help broadcasters comply with the different sections of the Broadcasting Code, including Section Five.

In addition, in March 2023 Kevin Bakhurst, (Ofcom’s previous Group Director for Broadcasting and Online Content) published an article on Ofcom’s website setting out typical features of news and current affairs programmes<sup>5</sup>.

We have also recently set out our approach to determining what constitutes “news” in the context of Section Five of the Broadcasting Code in the following published decisions:

- *Friday Night with Nadine* Talk TV, 3 February 2023 – Decision published in Broadcast and On Demand Bulletin 471, dated 3 April 2023<sup>6</sup>; and
- *Saturday Morning with Esther and Phil*, GB News, 11 March 2023 – Decision published in Broadcast and On Demand Bulletin 481, dated 18 September 2023<sup>7</sup>.

If you have any further queries, then please send them to [information.requests@ofcom.org.uk](mailto: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](mailto:information.requests@ofcom.org.uk)

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<sup>5</sup> See <https://www.ofcom.org.uk/news-centre/2023/can-politicians-present-tv-and-radio-shows-how-our-rules-apply>

<sup>6</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/256361/April-2023-Standards-Decision-Talk-TV.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/256361/April-2023-Standards-Decision-Talk-TV.pdf)

<sup>7</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/268146/Saturday-Morning-with-Esther-and-Philip,-GB-News,-11-March-2023.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/268146/Saturday-Morning-with-Esther-and-Philip,-GB-News,-11-March-2023.pdf)

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