

Reference: 01673437

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

18 October 2023

### Freedom of Information request: Right to know request

Thank you for your follow-up request for information concerning language used in guidance to identify Lesbian, Gay and Bisexual People. Your request was received on 20 September 2023 and we have considered it under the Freedom of Information Act 2000 ('the FOI Act').

#### Your request & our response

- 1. Broadcast Code Development: Any records of discussions and agreement, i.e. in the form of minutes or documented discussion, related to the development or updates of the Broadcast Code since 2010, with a particular focus on the language or terminology used to refer to Lesbian, Gay, and Bisexual people. This includes references to LGBT, LGBTQ, LGBTQI+, and other variations.*
- 2. Equality Impact Assessments: Information on any Equality Impact Assessments that have been undertaken by Ofcom since 2010, in line with the provisions of the Equality Act 2010. Specifically, any assessments related to the Broadcast Code or any other regulatory guidance where language or terminology concerning Lesbian, Gay, and Bisexual people might be affected.*
- 3. Stakeholder and External Consultations: Details of any consultations with external agencies, advisors, or consultants concerning the aforementioned topics since 2010. This should include the names of the agencies or individuals consulted and a summary of their recommendations or feedback.*
- 4. Public Sector Duty Compliance: Information on how Ofcom has ensured compliance with the public sector duty as outlined in the Equality Act 2010, specifically with regard to:*
  - a. Eliminating discrimination, harassment, victimisation, and any other conduct prohibited by the Equality Act 2010.*
  - b. Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.*
  - c. Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.*

We have considered this follow up request and whilst we note that the focus has been narrowed somewhat, we still consider that the request is extremely broad such that Section 12 of the FOI Act will apply.

Under Section 12 of the FOI Act, Ofcom is not obliged to comply with a request for information if we estimate 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 ('the Regulations'), and is, for Ofcom, £450. The Regulations provide that costs are to be estimated at a rate of £25 per person per hour which equates to 18 hours of time. 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 very broad nature of this request would require a very wide and extensive search of our records and systems. Under the FOI Act Ofcom has a duty to confirm whether it holds any information of the description specified within the request. As such, this requires us to accurately locate information in order to process any request. A broad request for 'information' or 'details' would involve manual searches of our records and systems in order to locate any potentially relevant information as this may cover a wide number of data sources. Searching would be further impacted by the date range for this request which spans a broad timeframe. Ofcom estimates that it would take at least 18 hours to search for, identify and retrieve any information which may be relevant to this request. As such the cost of complying with your request will exceed the appropriate limit. We have therefore been unable to fulfil your request under Section 12 of the FOI Act.

We also note that for your request we treat each item above separately in order to minimise the administrative requirement of this request. We consider that in accordance with Regulation 5(2) of the Fees Regulations, these requests should be treated as aggregated for the purposes of Section 12 of the FOI Act, in that they relate to the same or similar information. ICO guidance confirms that, requests are likely to relate to the same or similar information, where, for example, a requestor has expressly linked the requests, or where there is an overarching theme or common thread running through in terms of the nature of the information that has been requested. Accordingly, we maintain our application of Section 12 of the FOI Act to the entirety of this request.

You may wish to consider a narrower, more focused request in relation to a particular matter or decision, or specific types of documents in relation to a particular matter or decision. As previously advised should you have any specific queries in relation to any of our processes we would be happy to help in answering these. A request in relation to a particular matter or decision may be one in which we can provide information within the appropriate limit.

It may also be helpful to briefly explain how Ofcom undertakes its equality duties. One of the ways in which Ofcom complies with its equality duties is by assessing the potential impact of all of our policy decisions before we make them. This is generally done by carrying out an Equality Impact Assessment ('EIA'), which examines the impact a particular policy is likely to have on specific groups of people, depending on their particular circumstances. You can find further information about our approach to impact assessments, including EIAs [here](#).

We consider that in carrying out our duties Ofcom does so in a manner consistent with the public sector equality duty set out in s.149 of the Equality Act 2010.

To be helpful, the majority of our work across Telecoms, Spectrum and Public Service Broadcasting oversight, the equality impact assessments are part of our published documentation. For example, see our published [Impact assessment guidance](#), which reflects our legal obligations and sets out our general approach to how we assess and present the impact of our proposed decisions.

As you may be aware, our work enforcing editorial standards does require us to consider language and terms referring to members of protected characteristic groups, including Lesbian, Gay, and Bisexual people, used on licensed broadcast services. It may be helpful for you to know that to help Ofcom fulfil its duties in this area, we regularly publish research around audience attitudes to potentially offensive language. Our most recent research, [Public attitudes towards offensive language on TV and radio](#) was published<sup>1</sup> in September 2021 and includes findings of audience attitudes to the use of potentially offensive terms referring to members of protected characteristic groups, including Lesbian, Gay, and Bisexual people.

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)

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

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<sup>1</sup> A Quick Reference Guide to the research can be found [here](#).