

Reference: 01754233

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

4 March 2024

## Freedom of Information request: Right to know request

Thank you for your request for information as detailed below.

This request was received on 8 January 2024 and we have considered it under the Freedom of Information Act 2000 (the “FOI Act”). We wrote to you on 5 February 2024 to say we needed more time to consider the public interest in withholding or disclosing the information you have requested – we have now concluded this consideration.

### Your request

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*“I would like to request to see the meeting notes from your predecessor, the ITC, about the ITV/Channel 3 Franchise applications from 1991.*

*I am particularly keen to know why bidders, 'CPV-TV' and 'North West Television' failed the so-called 'Quality Threshold' test in their applications, despite bidding more than the eventual franchise winners. Any information about any other applicants who failed the Quality Threshold test in 1991 would also be appreciated if available”*

### Our response

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The material from Ofcom’s legacy regulators is now maintained by the [National Archives](#), which may be of interest to you. However, we have searched for the information you have requested in Ofcom records, and can confirm that we hold information in scope of your request.

We hold minutes from meetings in 1991 which contain information about the ITV/Channel 3 Franchise applications. We have provided the pages from these minutes which contain information in scope of your request. We have redacted information that is outside the scope of your request, as well as personal information (please see the section 40 FOI Act exemption, detailed below) and information with respect to any particular (active) business which was obtained in the exercise of regulatory functions (please see the section 44 FOI Act exemption, detailed below).

We also hold other information in scope of your request. This includes ITC’s assessments of applications for Channel 3 licenses from 1991. These assessments considered whether an applicant met the minimum requirements and expectations under relevant parts of section 16(2) of the Broadcasting Act 1990. There is also a document entitled ‘Channel 3 License Assessments: Overview’. This summarises ITC’s assessments of applications as at the date of the document.

As noted above, some of the information in scope of your request contains personal information. We consider that this information is exempt from disclosure under section 40(2) of the FOI Act. Section 40(2) provides that personal information about persons other than the requester is exempt where, among other things, its disclosure would contravene any of the data protection principles in the UK General Data Protection Regulation and the Data Protection Act 2018. This includes the principle that

personal data must be processed fairly and lawfully. Section 40 is an absolute exemption under the FOI Act and does not require a public interest test. The personal information in the documents has therefore been redacted.

We further consider that some of the information in scope of your request is exempt from disclosure under section 42(1) of the FOI Act. This deals with the exemption for 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 A** to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

Finally, we consider that some of the information in scope of your request is exempt from disclosure under Section 44 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. The enactment that prohibits the disclosure of this information is section 393(1) of the Communications Act 2003 (“the Communications Act”). Under this section, we are prohibited from disclosing information with respect to a particular business that has been obtained in the exercise of our regulatory functions, unless that business consents or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which apply here. Section 44 of the FOI Act is an absolute exemption and therefore is not subject to the public interest test. Where possible, this information has been redacted. Where this was not possible, the document has been withheld.

I hope this information is helpful. 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

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### 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](mailto: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

<b>Section 42 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.</b>	
<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"><li>• Open decision making and public confidence in regulated activities.</li></ul>	<ul style="list-style-type: none"><li>• 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 ITC's external legal advisers and is connected with the giving or obtaining of legal advice.</li></ul>
<b>Reasons why public interest favours withholding information</b>	
<ul style="list-style-type: none"><li>• It is in the public interest that decisions made by Ofcom in the context of regulated activities is undertaken in a fully informed legal context, where relevant. Ofcom therefore needs high quality 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 in a timely fashion.</li><li>• Legal advice cannot be effectively obtained unless Ofcom is able to put all the facts before its legal advisers without fear that they may afterwards be disclosed. Without such effectively obtained advice, the quality of Ofcom's work would be much reduced because it would not be fully informed, and this would be contrary to the public interest.</li></ul>	