

Reference: 01944990

Information Requests
information.requests@ofcom.org.uk

17 March 2025

Freedom of Information request: Right to know request

Thank you for your request for information concerning illegal content Codes of Practice for user-to-user services - Measure ICU C2.

We received this request on 20 January 2025. We have considered your request under the Freedom of Information Act 2000 (“the FOI Act”). We wrote to you on 14 February 2025 to say we needed more time to consider the public interest in disclosing or withholding some information. We have now concluded this.

Your request & our response

I would like to make the following four requests, regarding Measure ICU C2 in the Illegal content Codes of Practice for user-to-user services (published December 2024).

(1) Dates and attendees at meetings between Ofcom senior leadership and Online Safety Group staff with representatives of child protection charities and civil society child sexual abuse and exploitation experts to discuss illegal harms measure ICU C2 (formerly 4A in November 2023 consultation version).

There are 285 colleagues within the Online Safety Group and Ofcom senior leadership. We meet stakeholders including representatives of child protection charities and civil society child sexual abuse and exploitation experts for many reasons and often multiple reasons. Therefore, it would require a considerable amount of time to manually locate, retrieve, identify and extract information relating to all meetings between Online Safety Group Staff/senior leadership and child protection charities and civil society experts and then manually review this information to identify whether the ICU C2 measure was referenced within any of those meetings. Section 12 of the FOI Act provides that we are 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. That sum is intended to cover the estimated costs involved in determining whether Ofcom holds the information requested, 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, which equates to 18 hours of time. We estimate that it would take us more than 18 hours to locate, retrieve, identify and extract the information you have requested.

However, we can confirm that no formal engagement was undertaken by Ofcom senior leadership or the policy team working on the ICU C2 measure, specifically to discuss the measure with child protection charities or civil society child sexual abuse and exploitation experts. Where such

organisations and individuals engaged with Ofcom in response to our consultation on the measure, non-confidential versions of these responses were published on our website. Our consideration of any such responses is set out within our Illegal Harms Statement.

(2) Dates, agendas, and attendees at meetings between Ofcom senior leadership and Online Safety Group staff with representatives of Home Office to discuss proposed changes to illegal harms measure ICU C2 (formerly 4A in consultation version).

We set out below a table of meetings between Ofcom and the Home Office to discuss proposed changes to illegal harms measure ICU C2 (formerly 4A in consultation version).

In accordance with the Information Commissioner’s Office’s previous decisions and guidance on requests for personal data about public authority employees, we have included in the table the names of attendees of meetings where the individuals concerned are senior colleagues, and/or sufficiently ‘public facing’ such that there is a reasonable expectation that their identity will be disclosed, and/or where their position involves a significant level of personal judgement and individual responsibility for the matters in scope of the request.

We consider that information relating to individuals falling outside of the above parameters, which is personal data, is exempt from disclosure under section 40(2) of the FOI Act, which provides that personal data which relates to persons other than the requester is exempt where, amongst 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. Those principles include that personal data must be processed fairly and lawfully. Section 40 is an absolute exemption under the FOI Act and is not subject to a public interest test.

Date	Attendees/agenda
10.12.24	<p>Ofcom: Melanie Dawes, Chief Executive</p> <p>Home Office: Matthew Rycroft, Permanent Secretary Home Office; ██████████, Private Secretary to the Permanent Secretaries – Public Safety</p> <p>DSIT: Emran Mian, Director General for Digital Technologies and Telecoms</p> <p>Agenda: information not held</p>
6.12.24	<p>Ofcom: Lindsey Fussell, Interim Group Director, Online Safety; Kate Davies, Public Policy Director.</p> <p>Home Office: Chloe Squires</p> <p>DSIT: Talitha Rowland, Emran Mian</p> <p>Agenda: information not held</p>
4.12.24	<p>Ofcom: Melanie Dawes, Chief Executive; Lindsey Fussell, Interim Group Director, Online Safety; Kate Davies, Public Policy Director.</p> <p>Home Office: Home Secretary; Chloe Squires; Jo Lee Morrison</p> <p>DSIT: Secretary of State; Emran Mian</p> <p>Home Office SPADs: Callum Tipple, Natasha Collett. Private secretaries ██████████</p> <p>Agenda: information not held</p>

4.12.24	<p>Ofcom: Lindsey Fussell, Interim Group Director, Online Safety.</p> <p>Home Office: Chloe Squires</p> <p>DSIT: Emran Mian</p> <p>Agenda: information not held</p>
29.11.24	<p>Ofcom: Jon Higham, Online Safety Policy Development Director; Andrew Breeze, Director, Technology Policy, Online Safety Group. [REDACTED]</p> <p>Home Office: Jo Lee Morrison</p> <p>DSIT: Talitha Rowland (DSIT Director), Daniel Okubo (DSIT DD)</p> <p>Agenda: information not held</p>
5.11.24	<p>Ofcom: Jon Higham, Online Safety Policy Development Director; [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]</p> <p>Home Office: [REDACTED], Jo Lee Morrison – HO Emerging Tech Unit; [REDACTED] – Online Safety Act Implementation Team</p> <p>Agenda:</p> <ol style="list-style-type: none"> 1. Objectives of the session 2. Illegal Harms Codes introduction 3. Outline of our Codes strategy 4. Summary of our Codes proposals 5. Outline of the feedback received 6. Our direction of travel 7. Discussion 8. Next steps

(3) Copies of emails or notes of discussions between the online safety policy director and the child safety policy director between 22 November and 16 December relating to the letter received by WhatsApp on 22 November 2024, referred to in Volume 2 (service design and user choice), page 12, footnote 40.

We can neither confirm nor deny whether we hold information that falls within the scope of this request.

We consider that disclosure is exempt under the FOI Act. In particular, under section 44 of the FOI Act, information is exempt from disclosure if its disclosure is prohibited by or under any enactment. In this case, section 393(1) of the Communications Act 2003 (the “Communications Act”) prohibits the disclosure of information about a particular business (such as WhatsApp), which we have obtained in the course of exercising a power conferred by, among other legislation, the Communications Act, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which apply here. Section 44 is an absolute exemption under the Communications Act and does not require a public interest test.

Please note that the footnote in question indicates that “WhatsApp have also released similar information publicly” and provides the following link: [reporting and blocking someone on WhatsApp](#).

(4)(a) Copies of correspondence - including emails and meeting notes - with DSIT officials, advisers or Ministers in November or December 2024 in which (a) the letter received by WhatsApp on 22 November 2024, referred to in volume 2 (service design and user choice), page 12, footnote 40, was discussed.

We can neither confirm nor deny whether we hold information that falls within the scope of part (a) of the request. Under section 44 of the FOI Act, information is exempt from disclosure if its disclosure is prohibited by or under any enactment. In this case, section 393(1) of the Communications Act 2003 (the “Communications Act”) prohibits the disclosure of information about a particular business (such as WhatsApp), which we have obtained in the course of exercising a power conferred by, among other legislation, the Communications Act, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which apply here. Section 44 is an absolute exemption under the Communications Act and does not require a public interest test.

The letter from WhatsApp dated 22 November 2024 was a response to the letter we sent to WhatsApp on 11 November 2024 as part of our standard confidentiality process when we are finalising a publication. We use this process to determine whether stakeholders have any objections to us disclosing information that they have provided to us confidentially. We carefully consider the representations that stakeholders make in response to this process prior to deciding what information we need to disclose, while having regard to section 292(1) and (2) of the Act. It is worth noting that during the confidentiality process, stakeholders from time to time suggest minor changes to the way in which we’ve summarised evidence they’ve provided, for accuracy. The letter from WhatsApp constituted its representations.

(4)(b) Copies of correspondence - including emails and meeting notes - with DSIT officials, advisers or Ministers in November or December 2024 in which ... (b) the final proposal for online safety illegal harms measure ICU2, was discussed.

We can confirm that we do hold information within the scope of your request, however, we are unable to provide this as we consider that this information is exempt from disclosure under section 36 of the FOI Act. In particular, sections 36(2)(b)(ii) and (c) of the FOI Act 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, or
- Would otherwise prejudice, or would be likely to 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 also consider that further exemptions under the FOI Act are likely to apply to some of this information.

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

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

Freedom of Information: Right to know request

Section 36 exemption

The information we hold that falls within the scope of your request is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act 2000 (the Act). 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 information requested would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation and would otherwise prejudice, or be likely 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 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 his letter, please contact information.requests@ofcom.org.uk.

Corporation Secretary

Date: 12 March 2025

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

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Ofcom recognises that its approach to its duties under the Online Safety Act 2023 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. 	<ul style="list-style-type: none"> • The documentation in relation to which the exemption is claimed is documentation reflecting discussion with Government for the purposes of deliberation relating to the Codes measure in question. The disclosure of these documents could affect Ofcom’s ability to effectively deliberate on and discuss such matters and to engage with the Government going forward. • In order to fulfil its regulatory functions effectively, Ofcom needs to be able to engage with the Government in frank discussions and exchange opinions/recommendations in order for robust decisions to be made. The disclosure of information about such discussions would, or would be likely to, inhibit free and frank discussions in the future and this in turn would likely damage the quality of deliberation and lead to less robust decision making. <p>Given the above, disclosing such communications would also likely prejudice the effective conduct of public affairs.</p>

Reasons why public interest favours withholding information

- Ofcom is withholding the requested information. The public interest test has been applied on the basis of disclosing information which would reveal discussions with Government and deliberations in relation to the Codes measure in question. We consider that the public interest in withholding outweighs the public interest in disclosure.
- This is because the disclosure of this information is likely to prejudice the effective conduct of public affairs, as it would affect Ofcom’s ability to freely and effectively discuss and deliberate on such matters.
- Whilst there may be some weight attached to the public interest in disclosing to enable the public to understand how Ofcom is carrying out its role as the independent online safety regulator, we consider that significant prejudice would be caused by such a disclosure.