

General Policy on Information Gathering

Under our statutory information gathering powers in the Communications Act 2003, Wireless Telegraphy Act 2006 and the Postal Services Act 2011

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1. General Policy on Information Gathering

Purpose and Scope of Policy

- 1.1 This is Ofcom’s statement of general policy regarding our approach to using our statutory information gathering powers.
- 1.2 The Communications Act 2003 (the ‘Communications Act’), the Wireless Telegraphy Act 2006 (the ‘Wireless Telegraphy Act’) and Postal Services Act 2011 (‘Postal Services Act’) require Ofcom to prepare and publish a statement of our general policy with respect to:¹
 - a) the exercise of our statutory information gathering powers under:
 - i) sections 135, 136 and 137A of the Communications Act;
 - ii) sections 32 and 32A of the Wireless Telegraphy Act; and
 - iii) paragraphs 1 and 3 of Schedule 8 of the Postal Services Act; and
 - b) the uses to which we are proposing to put information obtained under those sections (except information obtained under section 137A of the Communications Act).
- 1.3 We are required to have regard to this statement of policy when exercising these information gathering powers. We reserve the right to deviate from this policy in appropriate circumstances and will generally explain our reasons if we do so. Examples may include, but are not limited to, when we are compelled to act in a particular way by a court or tribunal or as part of a sensitive investigation.
- 1.4 We have various other information gathering powers under other legislation where we are not required to publish a policy. While this policy does not apply to those other powers, we may choose to follow this policy as best practice when exercising those powers, where considered appropriate.
- 1.5 This policy will not apply in relation to our statutory information gathering powers under other legislation where we have separately set out how we intend to exercise our information gathering powers under that other legislation. For example, this policy does not apply in relation to the exercise of our information gathering powers under the:
 - a) Online Safety Act 2023;²
 - b) Network and Information Systems Regulations 2018;³ or
 - c) Competition Act 1998.⁴

¹ Section 145 of the Communications Act, section 34 of the Wireless Telegraphy Act and Schedule 8, paragraph 14 of the Postal Services Act.

² We have [consulted](#) on separate guidance in relation to the exercise of our information gathering powers under the Online Safety Act 2023. Once we publish this separate guidance, we intend to update this footnote to include a link to that separate guidance.

³ See section 8 of our “Guidance for the digital infrastructure subsector” which is part of our broader [guidance for operators of essential services](#).

⁴ Ofcom has statutory information gathering powers under the Competition Act 1998 in our capacity as a concurrent competition authority. Information on the exercise of our information gathering powers under the Competition Act can be found in our [Enforcement Guidelines for Competition Act investigations](#).

- 1.6 This policy does not apply when we are carrying out our information gathering activities as part of a criminal investigation or prosecution relating to the use of wireless telegraphy stations or apparatus.
- 1.7 This policy also sets out the legal requirements on recipients of a statutory information notice,⁵ including how we expect recipients to respond and the potential civil and criminal consequences of not doing so. Our statutory information gathering and enforcement powers to which this policy applies are summarised in Annexes A1 and A2 below.

Why Ofcom uses statutory information gathering powers

- 1.8 Exercising our functions in a way that is effective and proportionate requires us to ensure that our regulatory decisions are founded on a robust evidence base. Information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.
- 1.9 The statutory information gathering powers conferred on Ofcom by Parliament are an important tool by which we can obtain information from stakeholders in support of our functions. These powers enable us to address the information asymmetry that may exist between Ofcom and stakeholders active in the sectors we regulate and to discover, obtain and use information from stakeholders to take what we consider to be the best possible decisions. Our information gathering powers also allow us to compel the provision of certain information that stakeholders might not otherwise wish to provide, for instance when considering the case for regulation in the interests of citizens and consumers or enforcing regulatory obligations.
- 1.10 Wherever possible, Ofcom will draw from existing internal and external information sources, to avoid unnecessary duplication of effort and to minimise the burden placed on those from whom information is requested. However, there will remain specific areas where it is necessary to collect additional information. Where our regulatory activities are dependent on information held by stakeholders, using our statutory information gathering powers helps us obtain information and gain an evidence base which is accurate, robust and complete.

How we will use these powers

We will exercise our powers in a proportionate way

- 1.11 When exercising our information gathering powers, we must have regard to our relevant duties, including those in sections 3(3) and (4) of the Communications Act (to the extent relevant in the circumstances). These include a requirement to have regard to the principles under which our regulatory activities are transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.
- 1.12 As such, we will consider on a case-by-case basis whether exercising an information gathering power would be proportionate, in line with our regulatory principles to seek the

⁵ Different legislation describes requests for information in different ways, but this policy generally refers to them throughout as statutory information notices for simplicity and consistency.

least intrusive regulatory methods of achieving our objectives.⁶ This decision will be taken by a person with appropriate delegated authority from Ofcom's Board.⁷

- 1.13 In reaching our decision about whether to exercise an information gathering power, we will generally take account of a range of factors in the round including:
- a) the regulatory purpose for which we need the information;
 - b) the feasibility and cost on the stakeholder involved in collating the information, including the size or capacity of that stakeholder and the resources required to provide the information;
 - c) the use for which we intend to rely on the information and the extent to which we need to be able to rely on robust and reliable evidence;
 - d) the resources Ofcom will need to gather and process the information;
 - e) whether the information is available from other sources (including whether the information may already be held by Ofcom, and if so, whether we consider we need it in a different format) or could be provided voluntarily;
 - f) any other potential costs involved; and
 - g) where relevant, and taking into account relevant factors above, whether it may be appropriate to:
 - i) send the same statutory information notice to all stakeholders of a particular type;
 - ii) only send a statutory information notice to a sub-set of those stakeholders; and/or
 - iii) send a smaller or adapted set of questions to some stakeholders.
- 1.14 However, in certain circumstances we will generally obtain information using our statutory powers, including:
- a) where we intend to rely on information provided by a stakeholder in published documents such as consultations and statements; and
 - b) where information will be relied on to make decisions in the context of an investigation or to make a decision that imposes requirements on a stakeholder.
- 1.15 Where information that we intend to rely on as part of our decision-making has been provided on a voluntary basis, we generally expect to use our statutory powers to confirm the information is accurate and complete, to ensure that our evidence base is reliable and robust.
- 1.16 We may also issue a statutory information notice when requesting customer or other information that may be commercially sensitive, including where a stakeholder asks us to request the information formally.
- 1.17 A statutory information notice will explain the purpose of the request, including a description of the required information and our reasons for requiring it.⁸ Where appropriate, we may also explain to stakeholders the criteria we used to determine the type or sub-set of stakeholders that have been sent a statutory information notice.
- 1.18 When exercising our information gathering powers we will, to the extent possible, take account of any legislation which may restrict the ability of a stakeholder to provide certain

⁶ The Communications Act, Wireless Telegraphy Act and Postal Services Act each contain a specific requirement for statutory information notices to be proportionate.

⁷ This is typically a project director but in certain circumstances, other appropriately senior colleagues have delegated authority to exercise these powers.

⁸ See section 137(3)(a) of the Communications Act; section 32(3)(b) of the Wireless Telegraphy Act; and paragraph 4(2) of Schedule 8 of the Postal Services Act.

information to us. However, it will be the responsibility of the person subject to the information power to draw any such legislation to our attention and explain how it restricts the recipient's ability to respond.

- 1.19 Ofcom's powers to require information do not apply to information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications,⁹ could be maintained in legal proceedings.
- 1.20 If a stakeholder is concerned about the proportionality of a statutory information notice, they are encouraged to raise this in writing (with an accompanying explanation) with the responsible director,¹⁰ copying the Information Registry,¹¹ including in response to any draft statutory information notice.¹²

Role of the Information Registry

- 1.21 Our statutory information notices (and significant informal requests) are managed and coordinated by a central team, the Information Registry,¹³ which is overseen by an Ofcom Enforcement Director. The Information Registry supports Ofcom in preparing, issuing and tracking statutory information notices and significant informal requests for information. Although the Information Registry handles most requests, there may be occasions where teams undertake their own requests or go direct to stakeholders.
- 1.22 The Information Registry coordinates the issuing of statutory information notices for many project teams across the organisation. It acts as a central contact point for stakeholders on information gathering matters, working with stakeholders in a constructive and cooperative way to give advance sight of upcoming requests and manage timeframes for response in a coordinated way. To ensure efficiency and to minimise the regulatory burden placed on stakeholders to the extent possible, the Information Registry will record and should have oversight of the number of statutory information notices which have been sent to a recipient at any one time. This helps ensure we set reasonable deadlines for stakeholders to respond and can consider the burden placed on stakeholders in the round when considering whether to issue requests.
- 1.23 It maintains up-to-date external stakeholder information, including contact details and corporate structure information. It also keeps records on whether a stakeholder has consented to the service of documents electronically where this is required by statute, to avoid repeatedly requesting consent.

⁹ This covers 'legal advice privilege' (which attaches to a particular communication or document if the dominant purpose of that communication or document was to obtain or give legal advice) and 'litigation privilege' (which relates to communications between a person and their lawyer (or between the person or their lawyer and a third party) made at the stage when litigation is pending or in contemplation, and only when made for the sole or dominant purpose of conducting that litigation). Information is not legally privileged solely because it has been sent to or from a lawyer.

¹⁰ Typically, a project director is responsible for deciding whether to issue a statutory information notice (including whether it is proportionate) but in certain circumstances, other appropriately senior colleagues have delegated authority to exercise these powers.

¹¹ We explain the role of the Information Registry below.

¹² We discuss draft statutory information notices below.

¹³ The Information Registry was launched in 2020. Further information on the Information Registry and our statutory information gathering processes can be found on the [Ofcom website](#).

- 1.24 The Information Registry also supports project teams across Ofcom to prepare and issue requests for information, ensuring requests use clear and consistent terminology and are prepared to a high standard.
- 1.25 Finally, the Information Registry is responsible for collating and tracking responses, ensuring that responses to statutory information notices are complete, accurate and submitted within the stipulated deadline. This ensures we can make effective decisions based on accurate, reliable and complete information while minimising the burden placed on stakeholders wherever possible. The Information Registry may escalate failures to respond to statutory information notices to Ofcom’s Enforcement team for further action where appropriate.

How the Information Registry works with stakeholders

- 1.26 As a central point of contact between external stakeholders and project teams, the Information Registry stays up to date with information gathering activities to identify peaks and manage them effectively where it is possible to so.
- 1.27 The team continuously seeks to ensure that Ofcom’s information gathering activities are transparent and consistent. Where necessary, the Information Registry will meet regularly with external stakeholders¹⁴ to provide visibility of the timing of upcoming statutory information notices.
- 1.28 The Information Registry acts as a central point of contact for all stakeholders for general advice on information gathering and queries about specific notices. It will also support stakeholders that may be unfamiliar with the process.

Information provided voluntarily

- 1.29 It is not always appropriate for us to gather information using our statutory powers. We often benefit from the provision of information from stakeholders on an informal or voluntary basis and from a constructive dialogue in relation to a range of issues. We particularly welcome engagement from stakeholders in what are often complex, technical matters. Examples of when we may consider it appropriate to obtain information on an informal or voluntary basis include but are not limited to:
- a) When gathering information for more general or monitoring purposes where we do not intend to rely on the information in a published document, in the context of an investigation or in a decision that imposes requirements on a stakeholder.
 - b) When gathering background or preliminary information to help facilitate our understanding of a particular area or issue, in particular where we would benefit from the views or opinions of stakeholders rather than require the provision of information or documentary evidence (or explanations of documentary evidence) based on objective facts.
- 1.30 As explained in paragraphs 1.14 - 1.15 above, if we intend to rely on information provided by a stakeholder on a voluntary basis in certain circumstances, we generally expect to use our statutory powers to confirm that information is accurate and complete. This should

¹⁴ The Information Registry generally meets regularly with those external stakeholders who receive significant numbers of statutory information notices each year, and on a more ad hoc basis with stakeholders receiving fewer statutory information notices.

ensure our decisions are based on robust and non-biased evidence. Additionally, if we have been told informally that certain information is not available (or, where relevant, cannot be generated), we may also use our statutory powers to obtain formal confirmation of this (or, where relevant, require stakeholders to generate or obtain the requested information).¹⁵

- 1.31 If we consider any part of a response to a statutory information notice is unclear, or the question does not appear to have been answered fully, we may issue one or more clarification questions. While requests for clarification may not be contained in a new statutory information notice, they should not be treated as an informal or voluntary request; a response to a clarification question is treated as a response to the relevant question in the associated statutory information notice, meaning we can take enforcement action for failing to comply with a request for clarification (see paragraphs 1.47 – 1.50 below).

Typical process

Draft statutory information notices

- 1.32 Ofcom will, as a general rule, issue statutory information notices in draft form to the stakeholder holding the relevant information to ensure that the notice is appropriately worded and targeted and sufficiently clear for the recipient to respond within the proposed timeframe.
- 1.33 Where Ofcom issues a statutory information notice in draft, we will allow an appropriate period of time for comment on the information or data required by the notice, as well as the practicality of providing the information in the proposed timescales. We will take into account any comments on the draft notice and decide whether we consider it appropriate to confirm or amend the draft notice before issuing it as a final version.
- 1.34 However, there are times when it is likely to be appropriate to issue statutory information notices without issuing a draft request to the recipient first. These include but are not limited to:
- a) where it is a simple request, or the request is for standard information known to be held by stakeholders, such as turnover numbers or basic customer information;
 - b) when we are exercising our enforcement functions, where prior notice of a statutory information notice (i.e., a notice in draft) may not be appropriate due to concerns relating to the destruction of documents;
 - c) where we are exercising our dispute resolution functions, where the tight timescales within which we are required to reach a determination may mean it is not possible to issue a statutory information notice in draft;
 - d) where information has been provided to Ofcom previously on an informal/voluntary basis or where we need to re-obtain information previously provided in response to a statutory information notice to use for a different purpose;
 - e) where we are asking for updates to information previously provided, where questions are the same as, or very similar to, questions previously asked;
 - f) where we are issuing a similar statutory information notice to a large number of stakeholders, such that issuing a draft request is not practicable; and

¹⁵ Some legislation gives us the power to require stakeholders to produce, generate or obtain relevant information. See, for example, sections 135(3C)(a) and 137A(2) of the Communications Act.

g) any other scenario in which Ofcom does not consider it appropriate to issue a statutory information notice in draft in the specific circumstances of the case.

1.35 Where Ofcom does not consider it appropriate to issue a statutory information notice in draft, we would, where possible and appropriate, still expect to engage with stakeholders in relation to the expected timing of a statutory information notice and the proposed deadline for responding.¹⁶ We may do this on an individual or collective basis (for example, via email, a website update or round table meeting), depending on the number of stakeholders we expect to send the notice to.

1.36 Where we consider it appropriate to pre-engage, this process should also allow a stakeholder to comment on the proposed purpose or proportionality of a request (including any decision not to issue a draft request). We would look to resolve any issues through constructive dialogue in advance of sending a draft or final statutory information notice.

Service of a statutory information notice

1.37 Requests made under our statutory powers must be set out in a formal notice and be served to the person from whom the information is requested.¹⁷

1.38 Where possible our preference is to issue statutory information notices by email or electronically to relevant regulatory contacts. Where necessary, we will seek consent from the relevant person to issue a statutory information notice by email or electronically.¹⁸ If we have not agreed such arrangements with the relevant stakeholder, the statutory information notice will be issued in hard copy addressed to the Company Secretary (or other responsible person).¹⁹

Content of a statutory information notice

1.39 Statutory information notices issued by Ofcom must be proportionate²⁰ and must describe the information required and state the reasons why it is required.²¹ A statutory information notice will specify or describe:

a) the information being requested;

¹⁶ Examples may include, but are not limited to, where there may be a risk of destruction of evidence in the context of an investigation or when timeframes imposed on us, for example, by a court or tribunal, mean this is not possible.

¹⁷ See, for example, section 137(5) of the Communications Act, section 32B(4) of the Wireless Telegraphy Act and paragraph 4(4) of Schedule 8 of the Postal Services Act. However, other appropriate methods may be used if the demand is for the purpose of determining who is liable to an administrative charge under section 38 of the Communications Act or under paragraph 1 of Schedule 8 of the Postal Services Act, and published in accordance with paragraph 4(6) of Schedule 8, for the purposes of ascertaining or verifying administrative charges payable for each charging year in carrying out postal services functions.

¹⁸ See section 395 of the Communications Act (which also applies to the Postal Services Act) and 113 of the Wireless Telegraphy Act.

¹⁹ See section 394 of the Communications Act (which also applies to the Postal Services Act) and section 112 of the Wireless Telegraphy Act.

²⁰ See, for example, section 137(3)(b) of the Communications Act, section 32B(3)(b) of the Wireless Telegraphy Act and paragraphs 1(4) and 3(4) of Schedule 8 of the Postal Services Act. We will in any event have regard to the requirement under section 3(3)(a) of the Communications Act for our regulatory activities to be proportionate and targeted only at cases in which action is needed.

²¹ See, for example, section 137(3)(a) of the Communications Act, section 32B(3)(a) of the Wireless Telegraphy Act and paragraph 4(2) of Schedule 8 of the Postal Services Act.

- b) why the information is needed in relation to our functions and the purpose for which we need it;
- c) the form and manner in which the information should be provided;
- d) the deadline by which the information should be provided; and
- e) the consequences of not complying with the notice.

Complying with a statutory information notice

Recipients must provide complete and accurate information

- 1.40 The recipient of a statutory information notice is under a legal duty to act in accordance with the requirements of the notice. This includes the requirement to provide complete and accurate responses to all the questions by the deadline. If recipients do not do so, this could lead to civil and criminal consequences. We summarise the potential consequences of failing to comply with the relevant legal duties in Annex A2.
- 1.41 On receipt of a statutory information notice, the recipient should:
- a) Carefully **read the requirements of all questions** (including any applicable definitions) and ensure they understand what is being requested. If the recipient does not understand any aspect of the notice, or has questions about the notice or the obligations it places on the recipient, they should contact the Information Registry as soon as possible.
 - b) Consider all systems and places where the requested information may be stored and **carry out appropriate searches** for the information.
 - c) Consider the response and **locate (or, where relevant, generate) any information required**, well in advance of the deadline to leave time for any issues to be resolved and for the information to be checked (taking into account paragraph 1.43 below) prior to sending it.
- 1.42 Before the recipient sends its response to Ofcom, they should make sure that:
- a) **A response has been provided to every question** (including all sub-parts to a question) and that their response answers the question asked. If the recipient does not have some or all the information requested, they should explain why and describe what searches have been carried out to check whether the information is available to them.
 - b) The response is being **provided in the format requested**. For instance, we might request a document in .docx format or a spreadsheet in .csv format. We generally only accept information returned in the format requested.
 - c) All responses provided are **clear, complete, and accurate**. If the recipient has any doubts about the accuracy of the information in their response, they should clearly explain any problems to Ofcom and provide the information with appropriate caveats. A response can refer to other documents held by Ofcom, but it should not require us to interpret a response by reference to other information/documents to understand the intended meaning.
- 1.43 The recipient should check the completeness and accuracy of the information provided prior to responding to the notice. An appropriate governance check should also be completed to ensure all responses are properly interrogated, cross-checked, and reviewed

through appropriate governance channels, including being signed off by an appropriate senior manager, prior to submission.²²

Response by the required deadline

- 1.44 The recipient must send the response by the deadline stipulated in a statutory information notice. If the recipient does not think it can provide a response by the deadline set, it should inform us immediately and explain why. Deadlines are likely to have been set taking into account any pre-engagement with stakeholders and/or comments on a draft statutory notice. We will therefore only agree to extend deadlines where there is good reason for doing so, like the unexpected absence of a key employee responsible for obtaining the required information, technical difficulties, or other exceptional circumstances beyond the recipient's control. Every extension request will be considered on its own merits.
- 1.45 There may be times where we require information quickly and so we may ask for the information to be provided in a phased approach. This will allow the recipient more time to provide information that may take longer to arrange (for instance, information that may need to be generated), and shorter timeframes for information that may be quicker to collect or produce.

Cancelling a statutory information notice

- 1.46 We may cancel a statutory information notice by giving notice to the recipient. When doing so, Ofcom will confirm that no further action is needed.

Failure to comply with a statutory information notice

- 1.47 Failure to comply with a statutory information notice can result in significant consequences. Failing to comply can mean failing to respond by the given deadline or providing an inaccurate or incomplete response (to one or more questions or parts of questions).
- 1.48 This may result in Ofcom taking enforcement action, which can include opening a formal investigation and issuing a formal contravention decision. Possible consequences include a significant financial penalty and, in some cases, a daily penalty for each day on which the non-compliance continues (for example, for each day that required information remains outstanding). In the most serious circumstances, non-compliance can also result in Ofcom suspending a regulated business' entitlement to provide networks, services, or facilities.²³
- 1.49 When taking enforcement action for non-compliance with a statutory information notice, we will follow our relevant enforcement procedures, as set out in our [enforcement guidelines for regulatory investigations](#). These Guidelines set out how we decide whether to take enforcement action, and the processes that we would typically follow.
- 1.50 It can also be a criminal offence to fail to comply with a statutory information notice or knowingly or recklessly provide false or misleading information. Further information is available in Annex A2.

²² We would take into account any failure to carry out an appropriate governance check when considering potential enforcement action for an incomplete or inaccurate response. See paragraphs 1.47 – 1.50 relating to failure to comply with a statutory information notice.

²³ See Annex A2 below for a summary of our enforcement powers.

Use of information obtained under our statutory information gathering powers

- 1.51 Where we exercise our information gathering powers, we will explain our reasons for requiring this information under the relevant legislation and how we intend to use such information.

Using information for a different purpose

- 1.52 Where we have obtained information for a specified purpose and wish to use that information for a different purpose, we will generally send the recipient another statutory information notice requiring the same information to be provided for the new purpose.
- 1.53 In some circumstances, we may, as an alternative, consider it appropriate to explain why we need to use the information for a different purpose and ask for the recipient's consent to use it for this new purpose. If the recipient does not give consent then we may send a statutory information notice requiring the same information to be provided for the new purpose.
- 1.54 When seeking to use information previously provided for a different purpose, we may also ask the recipient to confirm the information previously provided remains up-to-date and, where relevant, to provide updated information. We will generally do this in another statutory information notice.

Confidential information

- 1.55 Where requested in a statutory information notice, recipients must provide the information requested, even if they consider that the information, or any part of it, is commercially sensitive and/or confidential. Recipients should clearly identify any such confidential information and explain in writing their reasons for considering it confidential, for example, the reasons why they consider disclosure of the information will seriously and prejudicially affect the interests of their business, a third party or the private affairs of an individual.
- 1.56 Ofcom will take into account any representations made by recipients that certain information should be considered confidential. However, it is for Ofcom to decide what is or is not confidential, taking into account any relevant common law and statutory definitions. We do not accept unjustified or unsubstantiated claims of confidentiality. Blanket claims of confidentiality covering entire documents or types of information are also unhelpful and will rarely be accepted. Recipients should therefore identify specific words, numbers, phrases or pieces of information they consider to be confidential.
- 1.57 Any confidential information provided to Ofcom is subject to restrictions on its further disclosure under the common law of confidence. In many cases, information provided to Ofcom is also subject to statutory restrictions relating to the disclosure of that information (regardless of whether that information is confidential information).²⁴ Our general approach to the disclosure of information is set out below.

²⁴ For this reason, we do not generally consider it necessary to sign non-disclosure agreements.

Disclosure of information

Circumstances where we may disclose information that we have gathered

- 1.58 We will not disclose information we have gathered from stakeholders unless:
- a) we have consent;
 - b) we are required by a court or tribunal to disclose the information in relation to civil or criminal proceedings; or
 - c) there is another legal basis for us disclosing the information, and we consider it is proportionate to disclose the information in the circumstances.
- 1.59 The specific circumstances in which we may disclose information will depend on the relevant legal framework under which we have gathered that information and any statutory or common law restrictions on the disclosure of information by Ofcom.
- 1.60 For example, where we have gathered information relating to a particular business using our information gathering powers in the Communications Act, section 393 of the Communications Act explains that Ofcom cannot disclose that information without the consent of the person carrying on that business, unless this is permitted for specific, defined purposes (and in many cases only to specific persons), as set out in sub-sections (2) to (7). One of those purposes is where we consider disclosure facilitates the exercise of our relevant functions. It is a criminal offence for a person to disclose information in contravention of section 393.²⁵
- 1.61 Ofcom will generally redact information identified as confidential from our publications or withhold it from the disclosures we make. However, for the avoidance of doubt, we may disclose such information where permitted by law. For example, Ofcom may disclose such information to facilitate the carrying out of our functions by ensuring stakeholders can properly understand the basis for our reasoning.²⁶ We set out from paragraph 1.62 below the process we expect to follow if we propose to disclose information obtained through the exercise of our functions, including information identified as confidential.

The process we expect to follow if we propose to disclose information

- 1.62 When deciding whether to disclose information, we will carefully balance the need to disclose the relevant information against any concerns or objections raised by the person who provided the information in relation to its disclosure.
- 1.63 We may have explained our intention to disclose information in any draft or final statutory information notice. If we have not and subsequently propose to disclose information, we will normally first explain our intention to disclose the information (including the context in which we intend to disclose it) and give that person the opportunity to make representations about the proposed disclosure. There may be circumstances where this is not appropriate, for example, where immediate action is required due to a security incident.
- 1.64 We will generally try and resolve any objections to a proposed disclosure through constructive dialogue. If we remain of the view that we need to disclose the information

²⁵ Section 111 of the Wireless Telegraphy Act and section 56 of the Postal Services Act contain statutory restrictions on the disclosure of information by Ofcom that are similar to the restrictions in section 393 of the Communications Act.

²⁶ Our regulatory activities should also be transparent and accountable (section 3(3)(a), Communications Act).

and the person concerned continues to object, we will give them advance warning prior to making the disclosure. This will give the person concerned an opportunity to challenge our decision or raise the issue with any Procedural Officer, where relevant.

- 1.65 Where there is a need to regularly disclose information to exercise our functions, a different process for disclosing information may be appropriate. Where we intend to take a different approach to that set out in this policy, we would expect to explain our approach to stakeholders in advance of disclosing any information.
- 1.66 Where Ofcom decides the information provided does not need to be disclosed in full but considers it appropriate to include some information in a proposed disclosure, we may ask the person concerned to provide a summary of information or a range of numbers for the purposes of including this in the relevant disclosure, rather than simply removing the information.

Freedom of information requests

- 1.67 As a public authority, Ofcom is subject to the Freedom of Information Act 2000 (the 'FOI Act') meaning it has a general duty to provide access to information that is requested by a third party. However, a number of exemptions may apply in which case Ofcom is not required to disclose the requested information.²⁷ The applicability of any exemption will depend on the nature of the information sought by any FOI request made.
- 1.68 In particular, section 44 of the FOI Act exempts information from disclosure if its disclosure is prohibited under another enactment.²⁸ This means that where we have gathered information relating to a particular business (either using our information gathering powers in legislation²⁹ or on a voluntary basis), we are prohibited from disclosing that information in response to a FOI request, unless we have that business' consent.
- 1.69 Sometimes information provided to Ofcom may be considered to be 'environmental information' within the scope of the Environmental Information Regulations 2004 (the 'EIR'). In that case, we would consider whether any of the exceptions in the EIR may apply in which case we would not be required to disclose the requested information.³⁰
- 1.70 If we decide that we cannot disclose information because an FOI exemption / EIR exception applies, it is unlikely to be necessary to discuss this with the business that provided the information to us.
- 1.71 If we need more information to help us determine whether an FOI exemption / EIR exception applies, we will discuss the request with the business that provided the information to us. We are subject to statutory deadlines for responding to FOI requests and expect a prompt reply.

²⁷ The Information Commissioner's Office provides guidance on the [exemptions](#) that may apply.

²⁸ For example, where disclosure is prohibited under section 393 of the Communications Act, section 111 of the Wireless Telegraphy Act and section 56 of the Postal Services Act.

²⁹ This includes where information has been gathered using our information gathering powers in the Communications Act, the Wireless Telegraphy Act and the Postal Services Act.

³⁰ The Information Commissioner's Office provides guidance on the [exceptions](#) that may apply.

Record retention and personal data

- 1.72 As a public authority, we will need to retain information as part of the evidence base underlying any decision we reach. We will keep information in line with our [records and information management policy](#).
- 1.73 We may use our information gathering powers to obtain personal data if we consider that this information is necessary and relevant for the purpose of our functions. Personal data is defined in Article 4 of the UK General Data Protection Regulation ('GDPR') as information relating to an identified or identifiable living individual.
- 1.74 In all cases, Ofcom will seek to limit the personal data which it requires under its information gathering powers to that which is necessary for the performance of our functions.³¹
- 1.75 Those subject to our information gathering powers will be responsible for complying with their own obligations under relevant data protection legislation.³² Any personal data they process in responding to a statutory information notice is processed by them on their own account, as a data controller, rather than as a processor of that data for Ofcom. Our information gathering powers are not capable of requiring a person to process personal data in a way that contravenes UK data protection legislation,³³ including the UK GDPR. In determining whether the processing of personal data would contravene UK data protection legislation, the duty to provide the requested information should be taken into account.³⁴
- 1.76 Under Article 14 of the UK GDPR, where we (as data controller) have obtained personal data other than from the data subject, we must provide the data subject with certain information.³⁵ However, there are various exceptions to this obligation, which we will consider on a case-by-case basis. These exceptions include where providing the data subject with the required information would seriously impair our ability to achieve the objectives of the processing, or would involve a disproportionate effort,³⁶ taking account of any measures to protect the data subject's rights, freedoms and legitimate interests.³⁷ In making that assessment we would take into account that we would not expect to disclose any personal data unless we were satisfied we have a legal basis to do so, for example, because one of the statutory gateways for disclosure applies.
- 1.77 Ofcom's [General Privacy Statement](#) contains further information about how Ofcom will handle personal data.

³¹ This is consistent with Article 5(1) of the UK GDPR which provides for 'data minimisation', including that personal data shall be 'limited to what is necessary in relation to the purposes for which they are processed'.

³² These obligations include that those subject to our information gathering powers must have a valid lawful basis in order to process personal data. The ICO's '[A guide to lawful basis](#)' guidance provides further information about this. Those subject to our information gathering powers may find it helpful to refer to this when determining their lawful basis.

³³ UK data protection legislation means the legislation identified in section 3(9) of the Data Protection Act 2018.

³⁴ Under the UK GDPR, a person has a lawful basis for processing personal data if that is necessary for compliance with a legal obligation to which the controller is subject: Article 6(1)(c).

³⁵ UK GDPR, Article 14(1)-(3).

³⁶ UK GDPR, Article 14(5).

³⁷ When relying on the 'disproportionate effort' exception, it is necessary to assess whether there is a proportionate balance between the effort involved in providing the data subject with the required information and the effect that the use of their personal data will have on them. See ICO: [Are there any exceptions? | ICO](#)

Information security

- 1.78 Ensuring information is appropriately protected is central to Ofcom's work and our reputation as the UK's communications regulator.
- 1.79 The security of commercially confidential and sensitive personal information provided to Ofcom is taken extremely seriously. We consistently test and monitor the efficacy of our systems to protect the data we hold and ensure data is only kept in accordance with our [records and information management policy](#).
- 1.80 As noted above, we are also subject to both common law and statutory restrictions relating to the disclosure of information we have gathered and it is a criminal offence to disclose information in contravention of applicable statutory provisions. The safeguards provided by these statutory provisions apply to information that Ofcom has gathered using its statutory powers and apply to all information relating to a business that has been provided to us (regardless of whether it is confidential).

A1. Summary of statutory information gathering powers

The following table summarises our statutory information gathering powers under legislation which requires us to publish this statement of general policy.

Legislation	Provisions
<p>The Communications Act 2003</p>	<p>The Communications Act includes the following statutory information gathering powers:</p> <ul style="list-style-type: none"> a) Under section 135, Ofcom has broad powers to require the persons identified in subsection (2) to provide us with information we consider necessary for the purpose of carrying out our relevant functions, including under Chapter 1 of Part 2 of the Communications Act (relating to electronic communications networks and services). These include the purposes in subsection (3) which include, but are not limited to, obtaining information to ascertain whether a provider may be in breach of our regulatory conditions, to carry out market reviews, to set general conditions, to carry out our telecoms security duties and to prepare our Connected Nations reports on telecoms infrastructure. b) Under section 136, Ofcom has the power to require communications providers and persons that make associated facilities available to others, to provide us with information we consider necessary for the purpose of carrying out comparative overviews of the quality and prices of communications services, or for statistical purposes. c) Under section 137A, Ofcom has the power to require communications providers to produce, generate or obtain information for publication in relation to our functions under Part 1 (relating to electronic communications) and Chapter 1 of Part 2 of the Communications Act (relating to electronic communications networks and services).
<p>The Wireless Telegraphy Act 2006</p>	<p>The Wireless Telegraphy Act includes the following statutory information gathering powers:</p> <ul style="list-style-type: none"> a) Under section 32, Ofcom has the power to require persons who are using or have established, installed or used wireless telegraphy stations or apparatus, to provide us with information relating to the establishment, installation or use of the station or apparatus and any related matters, for statistical purposes. b) Under section 32A, Ofcom has a broad power to require persons to provide us with information we consider necessary for the purpose of carrying out our radio spectrum functions.

Legislation	Provisions
<p>The Postal Services Act 2011</p>	<p>The Postal Services Act includes the following statutory information gathering powers:</p> <ul style="list-style-type: none"> a) Under Schedule 8, paragraph 1, Ofcom has a broad power to require persons to provide us with information we consider necessary for the purpose of carrying out our functions in relation to postal services. b) Under Schedule 8, paragraph 3, Ofcom has the power to require postal operators and persons who provide access points or other facilities for use in connection with a postal service, to provide us with information we consider necessary to carry out comparative overviews of the quality and prices of postal services.

A2. Enforcement powers

The following table summarises our enforcement powers under legislation which requires us to publish this statement of general policy.

Information gathering power	Financial penalty for non-compliance ³⁸	Criminal offence(s) for non-compliance	Potential consequences of criminal offence
Sections 135, 136 and 137A of the Communications Act (except where Ofcom requested the information under section 135 for the purpose of carrying out any of its functions under sections 105L to 105Z of the Communications Act or preparing a report under section 105Z12).	Ofcom can impose a financial penalty of up to £2,000,000 for non-compliance with a statutory information notice. ³⁹ Ofcom can also impose a daily penalty of up to £500 per day for a continuing contravention. ⁴⁰	Offence A: It is an offence to fail to provide information in accordance with a statutory information notice. ⁴¹ Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false. ⁴²	Fine for Offence A. ⁴³ Fine and/or imprisonment of up to 2 years for Offence B. ⁴⁴
Section 135 of the Communications Act (where Ofcom requested the information for the purpose of carrying out any of its functions under sections 105L to 105Z of the Communications Act or preparing a report under section 105Z12).	Ofcom can impose a financial penalty of up to £10,000,000 for non-compliance with a statutory information notice. ⁴⁵ Ofcom can also impose a daily penalty of up to £50,000 per day for a continuing contravention. ⁴⁶	Offence A: It is an offence to fail to provide information in accordance with a statutory information notice. ⁴⁷ Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false. ⁴⁸	Fine for Offence A. ⁴⁹ Fine and/or imprisonment of up to 2 years for Offence B. ⁵⁰

³⁸ Any financial penalty we have the power to impose for non-compliance with a statutory information notice will be appropriate and proportionate and up to the maximum permitted by the relevant legislation. Non-compliance can mean failing to respond by the given deadline or providing an inaccurate or incomplete response (to one or more questions or parts of questions). In deciding whether to impose a financial penalty, and if so, the amount of any penalty, we will have regard to our [Penalty guidelines](#).

³⁹ Section 139(5), Communications Act.

⁴⁰ Section 139(4B), Communications Act.

⁴¹ Section 144(1), Communications Act.

⁴² Section 144(3), Communications Act.

⁴³ Section 144(1), Communications Act.

⁴⁴ Section 144(4), Communications Act.

⁴⁵ Section 139ZA(4)(b), Communications Act.

⁴⁶ Section 139ZA(4)(a), Communications Act.

⁴⁷ Section 144(1), Communications Act.

⁴⁸ Section 144(3), Communications Act.

⁴⁹ Section 144(1), Communications Act.

⁵⁰ Section 144(4), Communications Act.

Information gathering power	Financial penalty for non-compliance ³⁸	Criminal offence(s) for non-compliance	Potential consequences of criminal offence
Sections 32 and 32A of the Wireless Telegraphy Act 2006	Ofcom can impose a financial penalty of up to £2,000,000 for non-compliance with a statutory information notice. ⁵¹ Ofcom can also impose a daily penalty of up to £20,000 per day for a continuing contravention. ⁵²	<p>Offence A: It is an offence to fail to provide information in accordance with a statutory information notice.⁵³</p> <p>Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false.⁵⁴</p>	<p>Fine for Offence A.⁵⁵</p> <p>Fine and/or imprisonment of up to 2 years for Offence B.⁵⁶</p>
Paragraphs 1 and 3 of Schedule 8 of the Postal Services Act 2011	Ofcom can impose a financial penalty of up to £50,000 for non-compliance with a statutory information notice. ⁵⁷	<p>Offence A: It is an offence to fail to provide information in accordance with a statutory information notice.⁵⁸</p> <p>Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false.⁵⁹</p>	<p>Fine for Offence A⁶⁰</p> <p>Fine and/or imprisonment of up to 2 years for Offence B.⁶¹</p>

⁵¹ Section 32D(7), Wireless Telegraphy Act.

⁵² Section 32D(6) Wireless Telegraphy Act.

⁵³ Section 33(1), Wireless Telegraphy Act.

⁵⁴ Section 33(4) Wireless Telegraphy Act.

⁵⁵ Section 33(3), Wireless Telegraphy Act.

⁵⁶ Section 33(5), Wireless Telegraphy Act.

⁵⁷ Schedule 8, Part 2, paragraph 7(6), Postal Services Act.

⁵⁸ Schedule 8, Part 2, paragraph 13(1), Postal Services Act.

⁵⁹ Schedule 8, Part 2, paragraph 13(4), Postal Services Act.

⁶⁰ Schedule 8, Part 2, paragraph 13(2), Postal Services Act.

⁶¹ Schedule 8, Part 2, paragraph 13(5), Postal Services Act.