

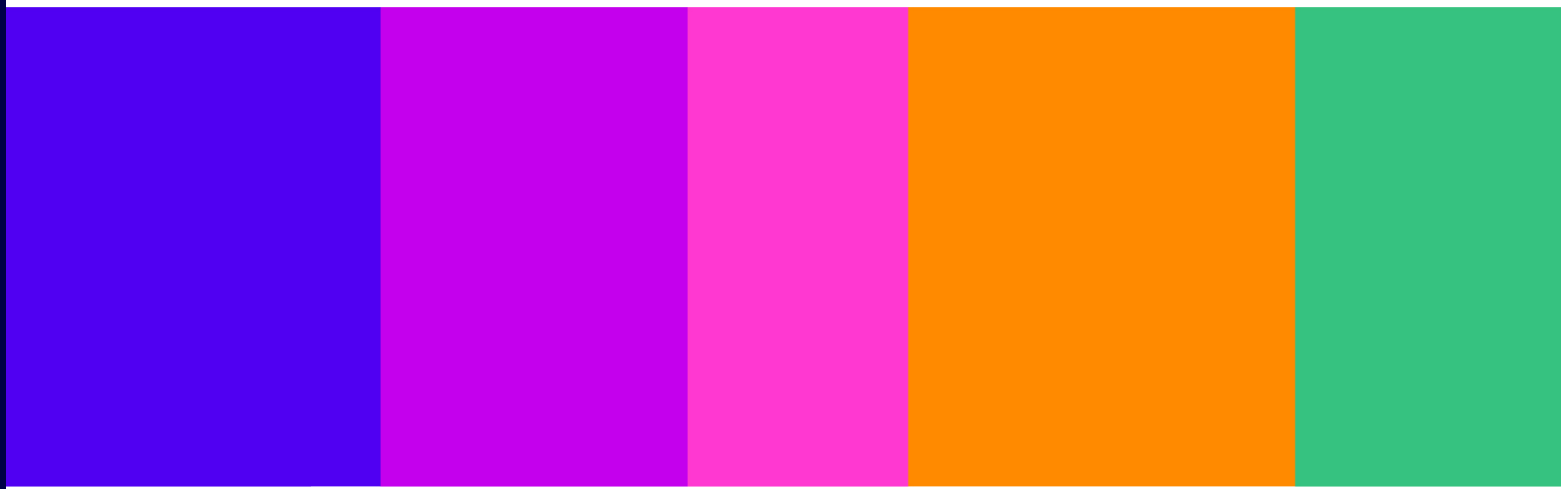
# Statement: General Policy on Information Gathering

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

**Statement:**

Published 18 December 2024



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# 1. Overview

- 1.1 As an evidence-based regulator, the ability to obtain information to inform our work is fundamental to deliver on our duties. This document sets out the updates we have made to our general information gathering policy, which explains to stakeholders how we will exercise these powers.
- 1.2 We are required by the Communications Act 2003 (the 'Communications Act'), Wireless Telegraphy Act 2006 (the 'Wireless Telegraphy Act') and Postal Services Act 2011<sup>1</sup> (the 'Postal Services Act') to publish a statement of general policy on the exercise of our statutory information gathering powers.
- 1.3 Our previous policy on information gathering was published in March 2005. We consulted on changes in 2015<sup>2</sup> which led to significant adjustments to our practical processes including the establishment of the Information Registry, our dedicated team to deal with the coordination of our information gathering activities. Since 2005, we have also been given additional information gathering powers within the scope of our statement of general policy (including in the context of post and telecoms security).
- 1.4 Against this background, we considered it was an appropriate time to update our policy to reflect our new processes and additional powers. In July this year, we published a consultation proposing to update our general policy. We received 13 responses to the consultation.

## What we have decided – in brief

There was broad support for the proposed update to our general policy and this statement confirms that we have decided to:

Amend the policy to:

- explicitly cover additional information gathering powers we have acquired since 2005 which are within the scope of our statement of general policy; and
- clarify the application of the policy to information gathering under other legislation.
- Update and clarify the text to reflect our experience of issuing statutory information notices<sup>3</sup> in practice.
- Provide further detail on how we will handle statutory information notices including:
  - the role of the Information Registry and how it coordinates information gathering for Ofcom;
  - where we may make use of information provided voluntarily;
  - typical processes including the issuing of draft statutory information notices;
  - use of information including disclosure and confidentiality;
  - record retention and personal data; and
  - information security.

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

<sup>2</sup> We consulted but did not subsequently publish a statement.

<sup>3</sup> Different legislation describes requests for information in different ways, but our draft policy generally refers to them throughout as statutory information notices for simplicity and consistency.

Many respondents did however raise concerns or request clarification in relation to our information gathering activities. For the reasons explained more fully in this document, we have decided to make some changes to our policy to address some of these comments. Our updated policy<sup>4</sup> [has been published](#) as a standalone document on our website.

More broadly to address the responses to our consultation, we:

- have set up a new organisation-wide information gathering forum to improve senior oversight of information gathering across Ofcom and provide a mechanism to better manage and prioritise requests as well as ensure our information gathering activities are proportionate;
- intend to update and simplify our templates for requesting information using our statutory powers;
- intend to update our external webpage on information requests;
- intend to develop and launch new software to streamline the process; and
- intend to update our internal tools and resources relating to information requests.

- 1.5 Our updated policy will apply to all new information gathering activities within its scope (i.e. carried out under the powers identified in Annex A1 of the policy) from 18 December 2024.
- 1.6 We have a number of other information gathering powers under other legislation where we are not required to publish a policy. We may choose to follow our general policy when exercising those powers, where considered appropriate.
- 1.7 Under some regimes, we have separately set out how we intend to exercise our information gathering powers and we do not intend to follow our general policy when exercising our powers under those regimes. For example, we have published separate guidance in relation to our information gathering powers under the Network and Information Systems Regulations 2018. We also recently consulted on separate standalone guidance on how we will exercise our new information gathering powers under the Online Safety Act 2023.<sup>5</sup>
- 1.8 The overview section in this document is a simplified high-level summary only. The decisions we have taken, and our reasoning are set out in the full document.

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<sup>4</sup> [General Information Gathering Policy 2024](#).

<sup>5</sup> [Consultation: Online Safety Information Guidance](#).

## 2. Introduction and background

- 2.1 In exercising our statutory functions, Ofcom typically needs to obtain information held by stakeholders to develop evidence-based proposals and to regulate effectively and proportionately. Parliament has given Ofcom broad powers under statute to require stakeholders to provide information to Ofcom in the areas we regulate.
- 2.2 The rest of this section provides further background on the purpose of our statutory information gathering activities and why we consulted on updating our general policy.
- 2.3 Section 3 summarises responses we received to our consultation to update our general policy on information gathering and our decisions in light of this feedback. It explains the intended purpose and scope of our updated policy, as well as how we have taken into account the points raised by stakeholders in response to the consultation. Annex 1 to this statement summarises our duties that are relevant to our decisions.
- 2.4 We have also today published our updated general policy on information gathering on our website as a standalone document. The annexes to our general policy summarise our information gathering and enforcement powers within its scope.

### The purpose of our statutory information gathering powers

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- 2.5 Our statutory information gathering powers are an important tool by which we can obtain information for the purpose of exercising our functions. It is important that our regulatory decisions are founded on a robust evidence base so that we exercise our functions in a way that is effective and proportionate. Obtaining access to information held by the stakeholders that we regulate, and certain others, is fundamental to ensuring Ofcom has a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.
- 2.6 Our information gathering powers help us to address the information asymmetry that exists between Ofcom and regulated stakeholders and to discover, obtain and use the information we need, including for monitoring and understanding market developments and investigating suspected compliance failures.
- 2.7 Where we need to rely on information provided to us in the context of our regulatory decision-making – particularly where we intend to rely on that information in published documents, in the context of an investigation or in a decision that imposes requirements on a stakeholder – we will generally seek to obtain that information using our statutory information gathering powers.
- 2.8 The importance of our statutory information gathering powers is reflected in the seriousness of the sanctions that can be applied for non-compliance. Failure to comply with a statutory information notice can result in a significant financial penalty or, in some cases, in the suspension of a stakeholder’s right to provide a service. 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, which can result in a fine and/or imprisonment.

## Why we are making changes

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- 2.9 We have statutory obligations to prepare and publish a statement of our general policy on how we intend to exercise our statutory information gathering powers.
- 2.10 Our [statement of general policy on information gathering](#) was last published in March 2005. At the time, we only had a statutory obligation to publish a statement of our general policy under the Communications Act and the predecessor to the Wireless Telegraphy Act 2006, the Wireless Telegraphy Act 1949.
- 2.11 Since 2005 we have been given additional information gathering powers within the scope of our general policy. For example, we have become the regulator for postal services and have a statutory obligation to publish a statement of our general policy on how we intend to exercise our statutory information gathering powers under the Postal Services Act. We also have new powers to request information relating to telecoms security.
- 2.12 We [consulted](#) on our general policy on information gathering in 2015 but did not publish a statement at that time. Responses to the 2015 consultation suggested Ofcom could be better coordinated and consistent in how it issued statutory information notices across different teams. We subsequently carried out an internal review which led to the creation of the Information Registry, our dedicated team to deal with the coordination of information notices.<sup>6</sup>
- 2.13 Taking into account these internal changes and the expansion of our statutory information gathering powers, we considered it was appropriate to ensure our approach to the exercise of these powers remains fit for purpose and reflects current practice, as well as minimising the burden placed on stakeholders. So, in July this year, we published a consultation proposing to update our general policy. We received 13 responses to the consultation which we have summarised in Section 3.

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<sup>6</sup> Ofcom December 2023: [Information requests from Ofcom: why you have one and what you need to do](#)

# 3. Summary of responses and our decisions

- 3.1 We received 13 responses to our consultation, which have been published (in whole or in part) on our website.<sup>7</sup>
- 3.2 We have identified the following five broad themes that respondents commented on:
- proportionality;
  - coordination and the Information Registry;
  - deadlines for responding;
  - draft requests; and
  - confidentiality and disclosure of information.
- 3.3 This section summarises the responses we received in relation to the above themes as well as other comments on our draft policy. As noted above, we have also recently [consulted](#) on separate standalone guidance on how we will exercise our new information gathering powers under the Online Safety Act 2023 ('Online Safety Information Guidance Consultation'). Some comments received in response to that consultation also relate to parts of our general policy – namely in relation to confidentiality and freedom of information requests – and we have summarised the relevant comments below.
- 3.4 We set out our responses, including our decisions (where relevant) below and explain where we have decided to make substantive changes to our policy taking into account respondents' comments and our relevant duties. We also explain where we intend to implement other initiatives to address respondents' comments more broadly.
- 3.5 Different legislation describes formal requests for information in different ways. While our policy generally refers to them throughout as statutory information notices, this statement refers to statutory information notices as well as other phrases used by respondents (including statutory or formal information requests or notices) interchangeably.

## Consideration of responses to our consultation

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### Proportionality

- 3.6 Our draft policy emphasised the importance of exercising our powers in an effective and proportionate way and explained how we intended to do so.<sup>8</sup>

### Respondent comments

- 3.7 Respondents acknowledged the inclusion in the draft policy of the type of factors Ofcom will generally consider when deciding whether issuing a statutory information request is

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<sup>7</sup> [Consultation: Ofcom's general policy on information gathering.](#)

<sup>8</sup> Ofcom's draft general policy on information gathering, paragraphs A1.14 – 1.18.

proportionate. However, respondents raised concerns about whether the scope of information requests was proportionate and queried how this was assessed by Ofcom.

- 3.8 AICES raised concerns that Ofcom is currently requesting information beyond its regulatory scope. It said that the policy should emphasise the importance of an unfettered proportionality test, and further information should not be requested without reasonable justification and proper assessment of administrative and cost impact.<sup>9</sup>
- 3.9 Three said that a final statutory information notice should be transparent about the criteria Ofcom has used to decide who is in scope of a particular request and said this should help ensure providers are treated equally. It considered this particularly important when the data provided will be made publicly available and may be used to make comparisons between providers.<sup>10</sup> Royal Mail said if Ofcom provided more transparency on the information requested and its purpose, this would ensure the information it provides is fit for purpose.<sup>11</sup>
- 3.10 Similarly, Vodafone said that Ofcom should make the criteria for deciding what information is being requested and from whom, clearer and more transparent. It was also concerned about the scope and proportionality of statutory information requests and said that the recipient should be provided with a justification for the inclusion of any given question in a formal information request.<sup>12</sup> It added that Ofcom should publish anonymised question lists so stakeholders can see what questions others are being asked, contribute related information and invite “scrutiny of the proportionality of the quantity and content of the requests”.<sup>13</sup>
- 3.11 BT said that Ofcom should consider undertaking proportionality assessments which consider the cost to respondents to comply with the request. It said that Ofcom should publish more detail on how proportionality assessments are conducted and publish metrics on the number of proposed statutory information notices and the number of information requests issued.<sup>14</sup> It also suggested that information requests in the same policy area should be amalgamated and that there should be a transparent governance path for industry to challenge the proportionality of a request.<sup>15</sup> In particular, BT said that there should be more visibility of involvement of the person delegated by the Board to undertake an impact assessment.<sup>16</sup>
- 3.12 All Points Fibre suggested Ofcom meet with stakeholders to better understand and consider the cost implications of requests when undertaking proportionality assessments. It said that Ofcom should consider tailoring the frequency and extent of statutory information requests, including considering the costs and resource implications for stakeholders, and amend statutory information requests accordingly.<sup>17</sup>

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<sup>9</sup> [AICES, Response to July 2024 Consultation](#)

<sup>10</sup> [Three, Response to July 2024 Consultation](#), p.4.

<sup>11</sup> [Royal Mail, Response to July 2024 Consultation](#), p.1.

<sup>12</sup> Vodafone, Response to July 2024 Consultation, p.5.

<sup>13</sup> Vodafone, Response to July 2024 Consultation, p.6.

<sup>14</sup> [BT, Response to July 2024 Consultation](#), p.1.

<sup>15</sup> BT, Response to July 2024 Consultation, p.3.

<sup>16</sup> BT, Response to July 2024 Consultation, p.1.

<sup>17</sup> [All Points Fibre, Response to July 2024 Consultation](#), p.1.



## Our response

- 3.13 We can issue statutory information notices under various legislation including the Communications Act, Wireless Telegraphy Act and Postal Services Act. That legislation specifies the type of information we can request for the purpose of exercising our functions.
- 3.14 We are also required under the Communications Act, Wireless Telegraphy Act and Postal Services Act to describe the information we require and state the reasons why it is required. This was reflected in paragraph A1.35 of our draft policy which explained that statutory information notices will specify or describe why the information is needed in relation to our functions and the purpose for which we need it.
- 3.15 We have decided to clarify this in the section of our policy that talks about how we exercise our powers in a proportionate way by adding a new paragraph 1.17 which states: “A statutory information notice will explain the purpose of the request, including a description of the required information and our reasons for requiring it”. Where appropriate, we may also explain the purpose of individual questions or sets of questions in addition to including a more general explanation of the purpose of the request up-front.
- 3.16 The explanation of the purpose of a statutory information notice should enable stakeholders to understand why we consider the request to be proportionate. It should not therefore be necessary, and we do not consider it appropriate or proportionate, to provide stakeholders with additional detail or metrics on how we have assessed the proportionality of a request.
- 3.17 As explained in paragraph A1.14 of our draft policy,<sup>18</sup> Ofcom 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 least intrusive regulatory methods of achieving our objectives. The Communications Act, Wireless Telegraphy Act and Postal Services Act also contain a specific requirement for statutory information notices to be proportionate.<sup>19</sup>
- 3.18 To help explain to stakeholders how we ensure our requests are proportionate, paragraph A1.15 of our draft policy identified a range of factors we will generally consider in the round before reaching a decision about whether to exercise an information gathering power. One of those factors is the cost to the stakeholder involved in collating the information. We do not hold specific information on the cost to stakeholders of responding to a particular request and do not consider it appropriate or proportionate to undertake a detailed analysis of costs before issuing a statutory information notice. We do however encourage stakeholders to provide Ofcom with information on the cost of responding to a particular request if they have concerns it may not be proportionate. As explained below, we are also taking steps to ensure we consider the burden on stakeholders of responding to all requests issued to them at a particular time in the round.
- 3.19 To address respondents’ concerns, and to ensure our statutory information notices are proportionate, we have however decided to clarify and make more explicit the types of factors we will generally take into account. In doing so, we have:
- a) Amended paragraph 1.13(e) of our policy to explain that when considering whether the information is available from other sources, we will generally consider whether

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<sup>18</sup> The policy we consulted on in July 2024.

<sup>19</sup> See also paragraph A1.35 of our draft consultation policy.

the information may already be held by Ofcom, and if so, whether we consider we need it in a different format.<sup>20</sup>

- b) Added a new part (g) to paragraph 1.13 which explains that where relevant, we will generally consider whether it may be appropriate to send a request to all or a sub-set of stakeholders and whether a smaller or adapted set of questions may be appropriate for some stakeholders. 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, and we have clarified this in paragraph 1.17 of our policy.

3.20 In response to BT's more specific comments:

- a) Paragraph A1.14 of our draft policy explained that a person with appropriate delegated authority from Ofcom's Board will decide whether a statutory information notice is proportionate. We confirm that this will be the responsible director or person that has signed the notice itself.<sup>21</sup>
- b) If a stakeholder is concerned that a statutory information notice may not be proportionate then we would encourage them to raise this in writing (with an accompanying explanation) with the responsible director or person that has signed the notice itself (copying the Information Registry), including in response to any draft request. We have decided to add a new paragraph 1.20 to our policy to clarify this. Indeed, a key reason for our general position on first issuing statutory information notices in draft is to help ensure final notices are proportionate.

3.21 More generally, we have decided to set up a new organisation-wide governance forum for information gathering (the 'Forum') to address some of the concerns raised in response to the consultation. The purpose of the Forum is to improve senior oversight of information gathering across Ofcom, provide a mechanism to better manage and prioritise requests, and ensure the burden placed on stakeholders by this activity is proportionate. We anticipate this will result in better coordination of requests and give stakeholders greater confidence that our information gathering activities are carried out proportionately.

3.22 We intend to update our templates for requesting information using our statutory powers as well as other internal tools and resources to reflect the points above and provide greater clarity and transparency for stakeholders.

3.23 We will continue to keep our information gathering processes under review and seek input from stakeholders about how things are working and will consider making further operational changes where possible and appropriate.

## Coordination and the Information Registry

3.24 In the consultation, we noted that in 2015 we carried out an internal review, which led to the establishment of the Information Registry, our dedicated team to deal with the coordination of information notices.

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<sup>20</sup> We have also clarified in paragraph 1.10 that we will draw from existing internal and external sources wherever possible. We discuss the suggestion of amalgamating requests in the below section of this statement on the regulatory burden and duplication (see paragraphs 3.30 - 3.36 and 3.43 - 3.51).

<sup>21</sup> 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.

- 3.25 Paragraphs A1.20 - A1.27 of our draft policy clarified the role of the Information Registry. It explained how the Information Registry engages with stakeholders including preparing, issuing and tracking information requests; co-ordinating information requests across Ofcom; maintaining up-to-date contact information for stakeholders; collating and tracking responses; acting as a central contact between project teams and external stakeholders; and providing advice and guidance to external stakeholders and project teams about the information gathering process.

### Respondent comments

- 3.26 Respondents recognised the value of the Information Registry and the improvements it has made to our information gathering activities. However, concerns were raised that it is not being utilised to its full potential. In particular, respondents highlighted how the Information Registry could play a greater role in information gathering activities, including to reduce the regulatory burden on stakeholders and provide more transparency over planned requests.

## Role of the Information Registry

- 3.27 Vodafone commented that the Information Registry is not fully utilising its function as “the gatekeeper of information requests coming out of project teams”.<sup>22</sup> It suggested that Ofcom could make greater use of informal information gathering powers through meetings and teach-ins: allowing discussion of respective approaches to a policy problem; outlining how data is captured; and discussing a sensible approach to the collection of data. It commented that it needs to have more overarching oversight of the planning process, including the Annual Plan. It also suggested each project team could be assigned a representative from the Information Registry from the initiation of the information gathering process.<sup>23</sup>
- 3.28 Three articulated concerns that at times, the Information Registry is not made aware of information requests from project teams, particularly where project teams manage these requests directly as opposed to through the Information Registry. Consequently, Three said these requests are not reflected in the forward-looking quarterly plan of upcoming requests. It said that if the Information Registry does not co-ordinate informal and supplementary information requests, it should still be involved in recording them and this would ensure better planning and co-ordinating of information gathering.<sup>24</sup> Related to this, BT suggested that statutory information notices could be sent back to the Information Registry when they are sent directly by project teams and not via the Information Registry.<sup>25</sup>
- 3.29 Virgin Media O2 (‘VMO2’) also expressed concerns about occasions when individual teams within Ofcom contact specific staff within VMO2, bypassing the usual regulatory channels and the Information Registry. It said this can result in communications being sent to staff who may have moved on, are on leave or are no longer the appropriate point of contact.<sup>26</sup> Additionally, Three said that at times, key contacts are missed off email distribution lists. It recommended that the Information Registry maintain an up-to-date list of contacts for each

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<sup>22</sup> Vodafone, Response to July 2024 Consultation, p.3.

<sup>23</sup> Vodafone, Response to July 2024 Consultation, pp.3-4.

<sup>24</sup> Three, Response to July 2024 Consultation, p.3.

<sup>25</sup> BT, Response to July 2024 Consultation, p.3.

<sup>26</sup> [VMO2, Response to July 2024 Consultation](#), p.3.

provider and ensure that all relevant contacts receive formal and informal requests. It said this should help ensure stakeholders provide complete and timely responses to requests.<sup>27</sup>

## Regulatory burden and potential duplication

- 3.30 BT said there could be greater amalgamation of statutory information requests within the same policy area to provide increased efficiency and reduce the regulatory burden on stakeholders.<sup>28</sup> Openreach suggested expanding the role of the Information Registry to reduce duplication and overlap in the questions asked.<sup>29</sup> Similarly, Vodafone raised concerns around potentially duplicative questions or questions that ask for the same data in a different format and suggest we develop a central inventory of data or otherwise implement a clear process for checking what data may already be held.<sup>30</sup>
- 3.31 WightFibre also said it considers that the Information Registry “still has some considerable way to go to achieve its objectives of coordinating, aligning and avoiding duplication of information requests”.<sup>31</sup> It said that there was a lack of co-ordination between Ofcom and other regulatory bodies, such as BDUK who often seek similar information in a different format, which puts a further burden on stakeholders. It suggested action could be taken to align the format of data collection across such organisations.<sup>32</sup>
- 3.32 Sky said the Information Registry’s role needs to be broader than just recording or having oversight of the number of requests. It suggested that the Information Registry should be empowered to take a more proactive role in addressing and managing the burden of uncoordinated statutory information requests.<sup>33</sup>
- 3.33 Five respondents raised concerns about the increased burden on industry, due to the volume and frequency of information requests. These included the increased size and complexity of requests.<sup>34</sup>
- 3.34 Specific concerns were raised about the burden of information requests on smaller operators. The Independent Networks Cooperative Association (‘INCA’) commented that altnets,<sup>35</sup> who are often small businesses with limited regulatory resources, are receiving numerous statutory information requests from Ofcom, many for the first time. It said for those who were unfamiliar with Ofcom’s methods, this has been a daunting and time-consuming process.<sup>36</sup> Additionally, WightFibre suggested that for smaller stakeholders, particularly those receiving statutory information requests for the first time, Ofcom should contact the relevant stakeholders to explain this process and consider a phased delivery timetable.<sup>37</sup> The Federation of Communication Services (‘FCS’) similarly suggested Ofcom engage directly with smaller providers receiving a statutory information request for the first time, to ensure they understand their responsibilities.<sup>38</sup> All Points Fibre suggested that

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<sup>27</sup> Three, Response to July 2024 Consultation, pp.3-4.

<sup>28</sup> BT, Response to July 2024 Consultation, p.3.

<sup>29</sup> [Openreach, Response to July 2024 Consultation](#), p.4

<sup>30</sup> Vodafone, Response to July 2024 Consultation, p.4-5.

<sup>31</sup> [WightFibre, Response to July 2024 Consultation](#), p.7.

<sup>32</sup> WightFibre, Response to July 2024 Consultation, p.4.

<sup>33</sup> [Sky, Response to July 2024 Consultation](#), p.3.

<sup>34</sup> BT, Openreach, Royal Mail, Three and VMO2.

<sup>35</sup> Altnets are alternative infrastructure providers.

<sup>36</sup> [INCA, Response to July 2024 Consultation](#), p.2.

<sup>37</sup> WightFibre, Response to July 2024 Consultation, p.6.

<sup>38</sup> [Federation of Communication Services, Response to July 2024 Consultation](#).

Ofcom should establish up a buddy system between smaller/less experienced stakeholders and larger/more experienced stakeholders to help with reporting and establish an effective and repeatable framework.<sup>39</sup>

- 3.35 All Points Fibre also suggested that Ofcom should consider gathering data in a more automated way. In particular, it suggested Ofcom consider requesting a shorter period of build data as this can be changeable and, as full fibre coverage increases, is likely to decrease over time.<sup>40</sup> INCA said Ofcom should consider developing smart data methodologies and/or more standardised datasets of industry metrics.<sup>41</sup>
- 3.36 Sky proposed Ofcom consider the benefits of regular and routine reporting and requesting periodic data sets, where requests can be re-run periodically, for example, on a quarterly basis. It said this should help Ofcom draw on existing information sources to avoid unnecessary duplication.<sup>42</sup>

## Transparency

- 3.37 VMO2 requested that the Information Registry team provide a 6-12 month view of planned information requests to improve transparency.<sup>43</sup> AICES also asked that the Information Registry provide a forward looking plan to members setting out the timing and detail of information requests, in order to gather and consider feedback about how onerous requests will be and to make adjustments accordingly.<sup>44</sup>

## Our response

### Role of the Information Registry

- 3.38 The Information Registry has significantly improved information gathering at Ofcom, and that is reflected in responses to the consultation, but we recognise there is still more to do. We intend to implement a series of improvements to our processes, including investing in software to support stakeholder engagement with Ofcom, new resources for stakeholders on the information gathering process, refreshed internal tools and resources, and the recent establishment of the Forum to provide senior leader accountability and oversight. This should provide more clarity and guidance for stakeholders, particularly those who have not previously engaged with Ofcom.
- 3.39 We acknowledge respondents' comments concerning informal, follow-up and supplementary information requests to stakeholders that arrive directly from project teams, which the Information Registry may not be informed about. Ofcom would expect statutory information requests falling within the scope of our general policy to be sent via the Information Registry to allow for full oversight and management but, if this is not the case, we would urge stakeholders to notify the Information Registry immediately.<sup>45</sup> To BT's point

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<sup>39</sup> All Points Fibre, Response to July 2024 Consultation, p.1.

<sup>40</sup> All Points Fibre, Response to July 2024 Consultation, p.1.

<sup>41</sup> INCA, Response to July 2024 Consultation, p.5.

<sup>42</sup> Sky, Response to July 2024 Consultation, p.6

<sup>43</sup> VMO2, Response to July 2024 Consultation, p.3.

<sup>44</sup> AICES, Response to July 2024 Consultation.

<sup>45</sup> On occasion, project teams may issue requests direct to stakeholders, but this should have been notified to the Information Registry and we would expect the Information Registry to be copied in to any such requests.

about sending such notices back, we note that such notices would remain valid and the obligations conferred on recipients would still apply.

- 3.40 In response to Vodafone’s suggestion, we confirm that it is generally our existing practice for project teams to be assigned a representative from the Information Registry at the initiation of the information gathering process. We will also consider whether to use informal information gathering tools, including meetings and teach-ins with stakeholders, on a case-by-case basis.
- 3.41 To help address respondents’ comments around informal and supplementary requests, we have decided to add a new paragraph 1.31 to our policy to explain that 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 made 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. Typically, the Information Registry will have oversight of these clarification questions.
- 3.42 In response to concerns about key regulatory contacts and distribution lists, it is currently the case that the Information Registry maintains a list of regulatory contacts. It is important that stakeholders update the Information Registry if any contacts on this list change or take a period of leave that could impact a stakeholder's ability to respond to a request. The new software we intend to introduce will also allow stakeholders to update contact details directly in the system.

## **Regulatory burden and potential duplication**

- 3.43 We note that some of the concerns raised may have been prompted by recent large information requests. We recognise that as Ofcom’s remit has grown in areas such as network security and online safety, so too has our need for information and data to inform our work. In addition, our programmatic work such as Connected Nations<sup>46</sup> and telecoms market monitoring<sup>47</sup> has evolved to consider the markets we regulate in even greater detail, meaning our data needs have increased. We are conscious of the burden our information gathering places on both established and new stakeholders of different sizes and carefully consider the need to require the provision of information. We have made efforts to streamline and/or consolidate requests and provide regular and rolling reporting for some of our larger annual requests, for example Connected Nations and telecoms market monitoring. This approach will continue to be an organisation-wide focus for the year ahead.
- 3.44 The recently established information gathering forum seeks to ensure that in the round, requests are coordinated, proportionate and issued in a considered way. It also facilitates discussions about how we request information from stakeholders, including whether other means of data extraction are appropriate, or synergies exist across different projects that may have similar data needs so we can consolidate requests and in turn, reduce the burden on stakeholders. However, we do not consider the establishment of the Forum warrants a change to our policy.

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<sup>46</sup> Ofcom, [Connected Nations and infrastructure report](#).

<sup>47</sup> Ofcom [Monitoring consumer outcomes in the mobile sector](#).

- 3.45 As explained above, we consider on case-by-case basis whether exercising an information gathering power would be proportionate, in line with our regulatory principles to seek the least intrusive regulatory methods of achieving our objectives.<sup>48</sup> Our policy also identifies the factors we will generally take into account in the round to ensure our requests are proportionate. These include the feasibility and cost to the stakeholder involved in collating the information relative to the purpose for which the information is requested including, for example, the size or capacity of that stakeholder and the resources required to provide the information.<sup>49</sup>
- 3.46 As explained above, we have also decided to add a new part (g) to paragraph 1.13 of our policy which explains that, where relevant, we will generally consider whether it may be appropriate to send a request to all or a sub-set of stakeholders and whether a smaller or adapted set of questions may be appropriate for some stakeholders.
- 3.47 We acknowledge the concerns raised around potentially duplicative requests or asking for similar information in a different format. We believe the new organisation-wide information gathering forum should help identify where different teams may be sending similar requests so that they can coordinate with each other as appropriate.
- 3.48 As explained above, we have also decided to amend paragraph 1.13(e) of our policy to explain that when considering whether the information is available from other sources, we will generally consider whether the information may already be held by Ofcom, and if so, whether we consider we need it in a different format. We have similarly clarified in that paragraph that we will draw from existing internal and external sources wherever possible. If a stakeholder is concerned that a statutory information notice includes duplicative questions then we would encourage them to raise this in writing (with an accompanying explanation) with the responsible director (copying in the Information Registry), including in response to any draft request.
- 3.49 Our statutory obligations, updates to our general policy and other initiatives outlined above should help address respondents' concerns relating to the regulatory burden of statutory information notices. Stakeholders are, however, also expected to ensure they have the resources necessary to respond to statutory information notices in accordance with their obligations. In particular, stakeholders affected by new regulatory regimes will need to reflect the increase in their responsibilities through adequately resourcing all relevant functions.
- 3.50 We note the concerns raised about smaller providers not having the experience or resources to handle formal information requests. One of the actions following this consultation and statement is to provide further training and support to project teams about the importance of pre-engagement and directing such stakeholders to Ofcom's website where we have made available more information about how to respond to a statutory information request.<sup>50</sup> We have also decided to explicitly recognise the importance of pre-engagement in our updated policy.<sup>51</sup>

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<sup>48</sup> In response to All Points Fibre's comment that full fibre data needs may reduce over time, we would take this into consideration when assessing the proportionality of a statutory information request.

<sup>49</sup> See paragraph 1.13(b) of our policy and paragraph 3.18 of this statement above.

<sup>50</sup> Ofcom December 2023: [Information requests from Ofcom: why you have one and what you need to do.](#)

<sup>51</sup> See paragraphs 1.35 – 1.36 of our policy and paragraphs 3.74 – 3.75 of our statement below.

- 3.51 Further, we have recently piloted changes to the templates we use for statutory information notices to make them simpler and easier for stakeholders to understand. Feedback on these changes has been positive, with stakeholders telling us that they are clearer, so we intend to roll out the new templates in early 2025.

## Transparency

- 3.52 An important part of the Information Registry's work is to provide greater transparency and predictability of our information gathering activities throughout the year. While we can, and will, continue to improve and refine in this area, we expect stakeholders to respond to our forecasts by ensuring they are adequately prepared to comply with our formal requests.
- 3.53 In response to VMO2's suggestion that we should provide a 6-12 month view of planned information requests, it is not presently feasible to do this. We currently offer large stakeholders a three-month view of planned statutory information requests and where we are aware of significant upcoming requests beyond this timescale, we will endeavour to alert affected stakeholders. However, as many of the dates would be provisional and subject to change, it is not practical to extend the forecast beyond three-months.
- 3.54 We are exploring internally whether we can provide greater visibility of planned programmatic requests to help stakeholders plan and resource to respond to such requests. Any updates will be set out on the Information Registry page on our website.<sup>52</sup> We will continue to review our processes and look at ways in which we could improve them.

## Deadlines for responding to information requests

- 3.55 Our draft policy noted that the Information Registry's oversight of statutory information requests helps ensure we set reasonable deadlines for stakeholders to respond. We also said that we will only agree to extend deadlines where there is good reason for doing so, such as the unexpected absence of a key employee responsible for obtaining the required information, technical difficulties, or other exceptional circumstances beyond the recipient's control, and every extension request will be considered on its own merits.<sup>53</sup>

## Respondent comments

- 3.56 Four respondents raised concerns around the burden imposed by Ofcom deadlines and provided suggestions about how to reduce this.<sup>54</sup> All Points Fibre suggested that Ofcom should review the timing of submissions to avoid holiday periods including summer and Christmas, as this can particularly impact smaller operators.<sup>55</sup> Three said Ofcom should allow a minimum of six weeks to respond to statutory information requests during peak holiday periods.<sup>56</sup>
- 3.57 Openreach and VMO2 raised concerns about the 9am deadline for responses to information requests.<sup>57</sup> <sup>58</sup> They commented that this could reduce the time to respond and was impractical for stakeholders.

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<sup>52</sup> Ofcom December 2023: [Information requests from Ofcom: why you have one and what you need to do.](#)

<sup>53</sup> See paragraphs A1.21 and A1.40 – 1.41 of our draft policy.

<sup>54</sup> All Points Fibre, Openreach, Three and VMO2.

<sup>55</sup> All Points Fibre, Response to July 2024 Consultation, p.1.

<sup>56</sup> Three, Response to July 2024 Consultation, p.3.

<sup>57</sup> Openreach, Response to July 2024 Consultation, p.4.

<sup>58</sup> VMO2, Response to July 2024 Consultation, p.2.



3.58 Royal Mail said that Ofcom often sets unrealistic timescales for providing information. While it acknowledged that requests for an extension should be considered on a case-by-case basis, it said that legitimate reasons for needing an extension to deadlines can be more varied than our policy suggests and could, for example, include other business constraints. It said that Ofcom should amend the draft policy to reflect this.<sup>59</sup>

## Our response

- 3.59 As explained above, we are conscious of the burden resulting from increased information gathering as Ofcom's remit has grown and our programmatic work has expanded. We have also set out above how our statutory obligations, updates to our general policy and other initiatives should help address respondents' concerns relating to the regulatory burden of statutory information notices.
- 3.60 In particular, the new cross-organisation information gathering forum has been set up in response to points raised following the consultation. The Forum will consider the appropriateness of deadlines in the context of all other demands on a particular stakeholder or set of stakeholders.
- 3.61 We acknowledge concerns over requests that are issued over the summer holiday period<sup>60</sup> or over Christmas.<sup>61</sup> There are times when this may be necessary (for example, because information is required as soon as possible or to avoid sending multiple requests immediately after holiday periods), and we do not consider it appropriate to never issue requests during holiday periods. Where we consider this necessary, we will however allow extra time for stakeholders to respond.
- 3.62 Regarding the specific time for responses, we note the 9am deadline had been set for 9am the day after we would normally set a deadline. Previously the response deadline was 5pm. This was to ensure the deadline was set at a time Ofcom colleagues would be available to start processing responses, taking into account the proportionality of deadlines. However, in response to respondents' comments, we will change to the standard deadline from 9am to 11am to allow stakeholders sufficient time to provide responses. There may be occasions when we need to set a different deadline but 11am will be the default deadline going forward.
- 3.63 We do not intend to expand the list of circumstances identified in our policy when an extension may be appropriate. Deadlines are likely to have been set taking into account any pre-engagement with stakeholders and/or comments on a draft statutory notice<sup>62</sup> and stakeholders are encouraged to raise any issues with the deadline before we issue a final notice. Where stakeholders do still request an extension to the deadline of a notice, we will continue to make an assessment on a case-by-case basis and our policy provides some examples by way of guidance for stakeholders. It is for stakeholders to put their case to Ofcom where they consider the deadline cannot be met and provide their reasoning and proposed revised deadline as soon as they are able to do so.

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<sup>59</sup> Royal Mail, Response to July 2024 Consultation, p.3

<sup>60</sup> From the start of July to the end of August.

<sup>61</sup> From mid-December until 3 January.

<sup>62</sup> We have amended paragraph 1.44 of our policy to clarify this.

## Draft statutory information requests

- 3.64 In our consultation, we said that Ofcom will generally issue statutory information notices in draft form first. We acknowledged that in many instances it will be appropriate to issue notices in draft to ensure our questions are sufficiently clear and appropriately targeted and so stakeholders can provide the information in the proposed timescales. Draft notices are likely to be particularly helpful when we require more complex or technical information.
- 3.65 However, we recognised that in some cases issuing draft notices can be disproportionate, leading to delays to our work and lengthening the process unnecessarily for both Ofcom and stakeholders, including where we require basic information or have sought the same type of data previously. We said there may also be other cases where it is appropriate to move straight to a final notice.<sup>63</sup>

### Respondent comments

- 3.66 Eight respondents expressed support for the continuation of issuing statutory information requests in draft form first.<sup>64</sup> Three respondents highlighted the importance of issuing draft requests even if only to allow stakeholders to comment on proposing timings and deadlines and plan accordingly.<sup>65</sup> AICES said that draft notices should always be issued for statutory information requests and [§<].<sup>66</sup> BT also said the provision of a draft notice is critical in almost all cases.<sup>67</sup>
- 3.67 Royal Mail said it finds Ofcom’s current process of providing a draft notice works well and ensures better data is provided to Ofcom; allows stakeholders to fully understand the information Ofcom is seeking; and helps in allocating resources to respond.<sup>68</sup> VMO2 and Vodafone commented that draft notices are valuable as they provide recipients with time to review questions, provide feedback on timings and content, begin preparatory work and flag any immediate concerns. It went on to say that the benefit of issuing in draft should not be underestimated by Ofcom.<sup>69 70</sup>
- 3.68 INCA said it would be a regressive step not to issue draft requests first. It also suggested that Ofcom should engage with stakeholders to determine a very limited and strict criteria for when it is appropriate not to issue a draft request first and ensure it is phased so that Ofcom is not allowed to deviate from this.<sup>71</sup>
- 3.69 VMO2 commented that not issuing a draft notice could be perceived as a barrier to stakeholders querying why Ofcom requires the data that is being requested and the proportionality of the statutory information request. It also said that having constructive discussions prior to issuing any statutory information request (draft or final) would help to understand Ofcom’s aim in requesting this data and whether this aim could be achieved in a more effective way.<sup>72</sup> Vodafone noted that pre-engagement can be more valuable than the

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<sup>63</sup> See paragraph 3.16 of our consultation.

<sup>64</sup> AICES, BT, INCA, Openreach, Royal Mail, VM O2, Vodafone and WightFibre.

<sup>65</sup> AICES, BT and Openreach.

<sup>66</sup> AICES, Response to July 2024 Consultation.

<sup>67</sup> BT, Response to July 2024 Consultation, p.2.

<sup>68</sup> Royal Mail, Response to July 2024 Consultation, p.1.

<sup>69</sup> VMO2, Response to July 2024 Consultation, pp.3-4.

<sup>70</sup> Vodafone, Response to July 2024 Consultation, p.4.

<sup>71</sup> INCA, Response to July 2024 Consultation, p.4.

<sup>72</sup> VMO2, Response to July 2024 Consultation, pp.3-4.

formal draft process in shaping questions as draft requests rarely change much when in final form.<sup>73</sup>

- 3.70 WightFibre expressed support for Ofcom’s approach and said that Ofcom should have the freedom to issue statutory information requests without issuing a draft version first where the situation is time sensitive, for example for investigations and enforcement, or when the same data has previously been requested routinely. It did, however, suggest that stakeholders should be able to object to a decision not to send a statutory information notice in draft.<sup>74</sup>
- 3.71 WightFibre also suggested that Ofcom should always issue a draft information request to enable the respondent to explain to Ofcom (if required) why some of the data requested is not available in the format or structure requested where:
- a) Information has already been provided voluntarily or informally but orally; it said it “is a mistake to assume that a verbal statement on a particular point can always be supported by the level of data and analysis Ofcom expects in its information requests”.<sup>75</sup>
  - b) Requesting similar information to that previously requested; it said it “is a mistake to assume that ‘similar information’ is equally easy to produce as what has been provided before”.<sup>76</sup>

## Our response

- 3.72 We welcome respondents’ support for our position of generally issuing draft responses. We recognise the value in issuing requests in draft, including to allow stakeholders to comment on the purpose and proportionality of a request (and alert us where they believe the same or similar information has been requested previously) as well as comment on the proposed deadline for responding. As stated in our draft policy, as a general rule we expect draft notices to be issued unless the request falls under the one of exceptions outlined in paragraph 1.34 of our policy.
- 3.73 We consider providing strict and closed criteria for when we may not issue a request in draft risks posing restrictions on our information gathering that are too rigid and could affect our ability to gather information in a timely manner. However, we expect the instances when we do not consider it appropriate to issue a draft request to be limited.
- 3.74 We recognise that even if we may not consider it appropriate to issue a draft request for a stakeholder to comment on the substance of a request, it will generally be best practice to pre-engage with stakeholders to let them know we intend to send a statutory information request and the proposed deadlines for responding to that request. We may do this on an individual or collective basis (for example, via email, a website update or round table meeting). There may however be times when we consider pre-engagement is not possible or appropriate. These 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. We have added a new

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<sup>73</sup> Vodafone, Response to July 2024 Consultation, p.4.

<sup>74</sup>WightFibre, Response to July 2024 Consultation, p.7.

<sup>75</sup>WightFibre, Response to July 2024 Consultation, p.7.

<sup>76</sup>WightFibre, Response to July 2024 Consultation, p.7.

footnote at paragraph 1.35 of our policy clarify this. We also intend to include these changes in our updated internal tools and resources.

- 3.75 Any pre-engagement should also allow a stakeholder to object to 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. We have added a new paragraph 1.36 to our policy to clarify this.
- 3.76 In relation to WightFibre’s suggestion that Ofcom should always send a draft request in specific scenarios, we will consider whether it is appropriate to issue a statutory information notice in draft on a case-by-case basis having regard to the exceptions in our policy. We may consider it appropriate to issue a request in draft even if it may fall within one of the exceptions in our policy.
- 3.77 Having considered comments relating to the re-use of information for another purpose (see paragraphs 3.109 - 3.112 below) we have also decided to add a new exception to paragraph 1.34(d) of our policy which explains that where we need to re-obtain information previously provided in response to a statutory information notice to use for a different purpose, we may not consider it necessary to issue that request in draft.

## Confidentiality and disclosure of information

- 3.78 In our consultation we said that the updated policy aims to provide further detail about how we will handle statutory information notices including in relation to confidentiality and disclosure of information.<sup>77</sup>

### Respondent comments

- 3.79 Respondents acknowledged that our updated policy set out the process relating to confidentiality and disclosure of information and said this was helpful.
- 3.80 Five respondents expressed concerns about the sensitive nature of information Ofcom gathers and wanted further clarity on how Ofcom can ensure the information is treated confidentially and to consider this when information is being shared.<sup>78</sup>
- 3.81 In particular, WightFibre suggested the confidentiality and disclosure process should be included in statutory information requests.<sup>79</sup> INCA expressed concerns that Ofcom is being provided with sensitive information without respondents being aware of the relevant confidentiality process. It said this can result in information being submitted via email as opposed to the secure portal, including when stakeholders are having issues accessing this.<sup>80</sup>
- 3.82 To help address concerns around the confidentiality of information held by stakeholders, Openreach requested that Ofcom send a statutory information request where the information requested includes commercially sensitive information or any kind of customer information.<sup>81</sup> A response to our Online Safety Information Guidance Consultation also suggested that we should accept blanket claims of confidentiality over entire documents.<sup>82</sup>

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<sup>77</sup> See paragraphs A1.50 – A1.60 of our draft consultation policy.

<sup>78</sup> AICES, INCA, Openreach, Three, and WightFibre

<sup>79</sup> WightFibre, Response to July 2024 Consultation, p.8.

<sup>80</sup> INCA, Response to July 2024 Consultation, p-5.

<sup>81</sup> Openreach, Response to July 2024 Consultation, p.5.

<sup>82</sup> [Apple, Response to Online Safety Information Guidance Consultation, p2.](#)

- 3.83 Three said that the confidentiality check deadlines needed to be extended from three days to a minimum of one week, to allow time for internal validation and approval.<sup>83</sup>
- 3.84 In relation to the disclosure of information, WightFibre said it is not acceptable to say Ofcom will ‘normally’ inform a stakeholder of its intention to disclose, as Ofcom should always do this.<sup>84</sup> More specifically, WightFibre requested that that Ofcom does not publish separate data for small geographic areas but consolidate with larger areas to ensure proper anonymisation of the data provided.<sup>85</sup>
- 3.85 All Points Fibre also suggested “providers of information should be provided with a preview of the data before it is made public, by early visibility or presentation of the collated data in advance of publication”.<sup>86</sup>

## Our response

- 3.86 We welcome the acknowledgement that our draft policy clearly explained the confidentiality and disclosure process. We also recognise that information provided to Ofcom may be commercially sensitive or contain third party confidential information and this is reflected in paragraphs 1.78 – 1.80 of our policy. Ofcom treats information provided by stakeholders with strictest confidentiality.
- 3.87 As explained above, we intend to roll out new templates for statutory information requests, and these will include a summary of the confidentiality and disclosure process, to provide even greater clarity for stakeholders.
- 3.88 To help address concerns around the confidentiality of information held by stakeholders, we have added a new paragraph 1.16 to our policy which explains that we may also send a statutory information notice when requesting customer or other information likely to be considered commercially sensitive, including where a stakeholder asks us to request the information formally.
- 3.89 We have also amended paragraph 1.56 to clarify that Ofcom will not accept unjustified or unsubstantiated claims of confidentiality. We acknowledge some stakeholders may claim entire documents are confidential and have clarified that claims of confidentiality over whole documents will rarely be accepted. This reiterates the importance of identifying specific words, numbers, phrases or pieces of information considered to be confidential.
- 3.90 In response to INCA’s concerns, where stakeholders have not been able to access the secure portal, we would urge stakeholders to contact the Information Registry who can assist in resolving upload issues.
- 3.91 In relation to the timeframe for confidentiality checks, we consider this on a case-by-case basis and do not consider it would be appropriate to set a blanket timeline. While we expect stakeholders to cooperate with the confidentiality process, we recognise the need to allow sufficient time for stakeholders to undertake the necessary checks and will seek to agree appropriate deadlines through constructive dialogue.
- 3.92 Responding to the concerns around the disclosure of information raised by WightFibre and All Points Fibre:

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<sup>83</sup> Three, Response to July 2024 Consultation, p.3.

<sup>84</sup> WightFibre, Response to July 2024 Consultation, p.8.

<sup>85</sup> WightFibre, Response to July 2024 Consultation, p.8.

<sup>86</sup> All Points Fibre, Response to July 2024 Consultation, p.2.

- a) Our policy explains that we will generally inform stakeholders of any intention to disclose information in advance. We will decide what explanation may be appropriate on a case-by-case basis which will normally involve explaining the context in which we intend to disclose that information. We have decided to amend paragraph 1.63 of our policy to confirm this. We may also explain how we intend to present that information, but we do not share draft versions of our documents in advance of their publication.
- b) While we generally expect to inform stakeholders of our intention to disclose information, there could be rare circumstances where this may not be appropriate, for example, where immediate action is required due to a security incident. We have added this example to paragraph 1.63 of our policy.
- c) We have also amended paragraph 1.63 of our policy to confirm that we may have explained our intention to disclose information in any draft or final statutory information notice.

## Other comments

3.93 There were a number of other comments made by respondents that do not fit neatly into the themes identified above. We have summarised and responded to these below.

## Growth Duty

### Respondent comments

3.94 AICES and BT suggested Ofcom should outline how it intends to implement the Growth Duty.<sup>87</sup> Both said that the impact of Ofcom’s information requests needs to be considered in relation to economic growth.<sup>88 89</sup>

### Our response

3.95 We have summarised our responsibilities under the Growth Duty in Annex A1 of this statement.

3.96 We do not consider our information gathering activities to be inconsistent with the Growth Duty on the basis that we exercise our information gathering powers in a proportionate manner, taking into account the burden this activity places on stakeholders. We also consider that the various changes we have made to our policy, as well as the other initiatives outlined above, will help ensure our activities continue to be consistent with the Growth Duty.

## Enforcement action

### Respondent comments

3.97 Sky said it was “conscious of the serious sanctions that Ofcom refers to in the consultation and the increase in enforcement action where responses are inaccurate or delayed”.<sup>90</sup>

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<sup>87</sup> The Growth Duty requires regulators to have regard to the desirability of promoting economic growth.

<sup>88</sup> AICES, Response to July 2024 Consultation.

<sup>89</sup> BT, Response to July 2024 Consultation, p.1.

<sup>90</sup> Sky, Response to July 2024 Consultation, p.4.

## Our response

- 3.98 We note that the importance of our statutory information gathering powers is reflected in the seriousness of the sanctions that can be applied for non-compliance. We aim to collaborate with stakeholders to ensure that we are provided with accurate and complete information by the deadline but will not hesitate to take action to enforce against non-compliance, where considered appropriate.
- 3.99 Stakeholders should therefore familiarise themselves with the sections in our policy on “Complying with a statutory information notice” and “Failure to comply with a statutory information notice”. We also intend to update our templates for requesting information using our statutory powers, to ensure the requirements on stakeholders are clear.

## Data

### Respondent comments

- 3.100 Both Openreach and Sky made suggestions about improvements in how Ofcom acquires and handles data.<sup>91 92</sup>
- 3.101 Openreach said that “data requests should align to ‘data minimisation’, including that personal data shall be limited to what is necessary in relation to the purposes for which they are processed”.<sup>93</sup>
- 3.102 VMO2 raised concerns in relation to record retention and personal data as it has identified that increasingly Ofcom requests the name and job title of those providing and signing off information. It questioned whether requesting this level of personal data is necessary, proportionate and/or legitimate.<sup>94</sup>

### Our response

- 3.103 It is for Ofcom to satisfy itself that, when exercising its information gathering powers which include the processing of personal data, it is doing so in a proportionate manner. The format in which we require a particular set of data to inform our work will be determined at a project team level. We would urge stakeholder engagement with project teams as early as possible to discuss the ways in which information can be provided for a particular project.
- 3.104 Our policy explains our processes in relation to personal data and record retention in paragraphs 1.72 – 1.77.
- 3.105 In response to VMO2’s concerns about Ofcom requesting the name and job title of the person providing information, there is no rule that this question must be included in statutory information requests. However, there may be circumstances where it is considered necessary to understand who has provided and/or signed-off on specific information being supplied, for example, where various types of information are requested within a longer and/or more complex request.

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<sup>91</sup> Openreach, Response to July 2024 Consultation, p.5.

<sup>92</sup> Sky, Response to July 2024 Consultation, p.5.

<sup>93</sup> Openreach, Response to July 2024 Consultation, p.5.

<sup>94</sup> VMO2, Response to July 2024 Consultation, p.2.

## Deviation from policy

3.106 Our draft policy explained at paragraph A1.4 that we reserve the right to deviate from the policy in appropriate circumstances. It also explained that where we consider it appropriate to do so, we will generally explain our reasons.

### Respondent comments

3.107 INCA, Openreach and WightFibre expressed concerns around the wording at paragraph A1.4 in the draft policy and suggested Ofcom should always explain any deviation from our policy.<sup>95 96 97</sup>

### Our response

3.108 We expect the circumstances in which we deviate from our general policy to be rare. As noted in the policy, we will also generally explain our reasons for any deviation from the policy. We have amended paragraph 1.3 of our policy to give examples of when we may need to deviate from our general policy which include, but are not limited to, when we are compelled to act in a particular way by a court of tribunal or as part of a sensitive investigation, where it may not be possible or appropriate to explain our reasons for doing so.

## Using information for another purpose

### Respondent comments

3.109 Openreach said it is important that Ofcom seeks stakeholder's consent before using information obtained for a specific purpose for another purpose. It did, however, explain that responses to statutory information notices are tailored to the purpose of the question following discussions with the Ofcom project team. For that reason, Openreach suggested Ofcom should send a new statutory information notice when requesting information for a new purpose.<sup>98</sup>

### Our response

3.110 We recognise the importance of making stakeholders aware of our intention to use information provided in response to a previous statutory information notice for a different purpose.

3.111 We also acknowledge that it will often be best practice to request information for a new purpose in a new statutory information request. This should ensure any request to use information for a new purpose is considered in accordance with the same governance procedures that both Ofcom and stakeholders have in place in relation to statutory information notices. There may, however, be some circumstances where we consider it appropriate to ask for consent to use previously provided information for a different purpose. We have decided to amend paragraphs 1.52 - 1.54 of our policy to clarify that when requesting information for another purpose we will generally issue a new statutory information request.

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<sup>95</sup> INCA, Response to July 2024 Consultation, p.3.

<sup>96</sup> Openreach, Response to July 2024 Consultation, p.6.

<sup>97</sup> WightFibre, Response to July 2024 Consultation, p.9.

<sup>98</sup> Openreach, Response to July 2024 Consultation, p.6.



3.112 Where we do decide to request information for another purpose in a new statutory information notice, we may not however consider it necessary to issue that request in draft. As explained above, we have decided to add this exception to paragraph 1.34(d) of our policy to confirm this.

## Freedom of Information requests

### Respondent comments

3.113 A response to our Online Safety Information Guidance Consultation queried whether information Ofcom has obtained informally or voluntarily is also captured by section 44 of the Freedom of Information Act 2000. In other words, whether Ofcom is also prohibited from disclosing information we have gathered informally or voluntarily relating to a particular business in response to a Freedom of Information request, unless we have that business' consent.<sup>99</sup>

### Our response

3.114 We confirm that this is correct and have clarified this at paragraph 1.68 of our policy.

## Assessment of impact of updated policy

3.115 In our consultation, we explained that we considered our proposed changes are likely to improve the transparency, efficiency and robustness of our regulatory practices and will not create significant new burdens for our stakeholders. We noted some stakeholders' concerns that statutory information notices can be burdensome which is why we consider the proportionality of each statutory information notice, while also having regard to our statutory duties. This includes, amongst other things, taking account of the resources required in providing the information to ensure we exercise our powers in a proportionate way.

3.116 We explained that our proposals would bring our policy up-to-date to reflect our current powers and experience of issuing statutory information notices in practice. To that extent, we considered any impact of our proposals on stakeholders is likely to be low and any impact there may be is likely to be positive. In particular, we considered that our proposals would provide further transparency, add clarity and promote certainty for stakeholders around how we issue statutory information notices, what we expect from stakeholders when responding and how we may use their information. We said that our proposals should help us obtain the information we need, by the time we require it, to facilitate the exercise of our functions. By setting clear expectations for stakeholders, we considered our proposals should also reduce the scope for non-compliance with statutory information notices. We said these potential impacts should ultimately benefit citizens and consumers as our role depends on accurate and timely information being provided by stakeholders.

3.117 We added that our proposals should also reduce the overall costs of our information gathering activities by streamlining our administrative processes (and therefore reducing the level of our administrative fees overall), taking into account the role of the Information Registry in coordinating the process.

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<sup>99</sup> [Google, Response to Online Safety Information Guidance Consultation, p.3.](#)

## Respondent comments

- 3.118 BT said that it does not believe that the changes proposed would improve transparency or efficiency and were unlikely to have a positive impact on stakeholders.<sup>100</sup>
- 3.119 Vodafone suggested that Ofcom should “publish a list of criteria to be used to assess the success of the new information gathering policy, in line with its commitment to impact assessments and ex-post evaluations”.<sup>101</sup>

## Our response

- 3.120 As explained above, we have decided to make various changes to our policy and have implemented, or intend to implement, various other initiatives to address stakeholder comments, including to ensure our requests are proportionate. We believe our updated policy and wider improvements to our information gathering activities are likely to improve the transparency, efficiency and robustness of our regulatory practices.
- 3.121 In particular, we have identified various steps we are taking to ensure our requests are proportionate and take into account the regulatory burden on stakeholders. These include our updated list of factors we will generally consider when assessing the proportionality of a request; the new organisation-wide information gathering forum we have set up to improve senior oversight of information gathering across Ofcom; and (where appropriate) pre-engaging with stakeholders where we do not consider it appropriate to send a request in draft.
- 3.122 We also consider that our updated policy and intended updates to our templates and webpage will add clarity and promote certainty for stakeholders. These include providing stakeholders with more transparency over how we assess proportionality, the purpose of a request and (where appropriate) the criteria we use to determine who we have sent a request to; confirming the circumstances where we may not consider it appropriate to issue a request in draft; and clarifying the confidentiality and disclosure process we will generally follow.
- 3.123 Overall, we consider any impact of our updated policy is likely to be positive rather than creating new burdens for our stakeholders.
- 3.124 In terms of how we will assess the success of our updated policy, we encourage stakeholders to raise any issues in relation to our information gathering activities, including at industry meetings run by the UK Competitive Telecommunications Association (UKCTA). We will review and consider feedback from stakeholders as and when received and may also seek input from stakeholders about how things are working. We will continue to keep our information gathering processes under review and will consider making further operational changes where possible and appropriate.
- 3.125 More generally, we will consider what monitoring and evaluation may be appropriate and proportionate to assess the impact and success of our updated policy (taking into account paragraphs 4.38 – 4.43 of our published [impact assessment guidance](#)).

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<sup>100</sup> BT, Response to July 2024 Consultation, p.4.

<sup>101</sup> Vodafone, Response to July 2024 Consultation, p.5.

# A1. Legal Framework

A1.1 This annex provides an overview of the main UK legislative provisions relevant to our decisions in this statement to update our general policy on information gathering. It is not a full statement of all the legal provisions which may be relevant.

## Requirement to publish general policy on information gathering

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A1.2 The Communications Act 2003 (the 'Communications Act'), Wireless Telegraphy Act 2006 (the 'Wireless Telegraphy Act') and Postal Services Act 2011 (the 'Postal Services Act') impose an obligation on Ofcom to prepare and publish a statement of our general policy with respect to:

- a) the exercise of the statutory information gathering powers under sections 135, 136 and 137A of the Communications Act, sections 32 and 32A of the Wireless Telegraphy Act and 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).

A1.3 We are required to have regard to this statement of policy when exercising our information gathering powers under the Communications Act, Wireless Telegraphy Act and Postal Services Act.

## Our general duties

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A1.4 Section 3(1) of the Communications Act states that it shall be our principal duty, in carrying out our functions:

- a) to further the interests of citizens in relation to communication matters;
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

A1.5 In performing our duties, we are required under section 3(3) of the Communications Act to have regard in all cases to the principles under which our regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to Ofcom to represent the best regulatory practice.

A1.6 Section 3(4) of the Communications Act also requires Ofcom, in performing our duties, to have regard to a number of matters, where relevant.

## Growth Duty

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A1.7 Under section 108 of the Deregulation Act 2015, Ofcom must have regard to the desirability of promoting economic growth when exercising our functions – known as the 'Growth Duty'. The Growth Duty complements our general duties, including under section 3 of the Communications Act.

- A1.8 In meeting the Growth Duty, we must consider the importance of the promotion of economic growth and ensure any regulatory action we take is necessary and proportionate.
- A1.9 Revised [Growth Duty: Statutory Guidance](#) was also published to assist Ofcom and other regulators in fulfilling their responsibilities under the Growth Duty. The guidance sets out how regulators such as Ofcom can better support sustainable economic growth through our decision-making and the way we regulate.
- A1.10 We also discuss this Growth Duty in Annex A1.5 of our recent [consultation](#) on Ofcom’s proposed Plan of Work 2025/26.

## UK Government’s Statement of Strategic Priorities

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- A1.11 In line with our duty under section 2B(2) of the Communications Act, we must also have regard to the UK Government’s Statement of Strategic Priorities (SSP) for telecommunications, the management of radio spectrum and postal services.<sup>102</sup>
- A1.12 The SSP identifies the following strategic priority areas:
- a) World-class digital infrastructure for the UK.
  - b) Safeguarding the interests of telecoms consumers, including the vulnerable and less engaged, by ensuring they are better informed and protected.
  - c) Ensuring the UK’s telecoms networks and services are secure and resilient.
  - d) A universal postal service and need for industry and Ofcom to work together to secure the long-term sustainability of the sector.

## Impact assessment

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- A1.13 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom’s activities.
- A1.14 More generally, impact assessments form part of good policy making and we therefore expect to carry them out in relation to a large majority of our proposals. We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in the least intrusive way. Our [impact assessment guidance](#) sets out our general approach to how we assess and present the impact of our proposed decisions.
- A1.15 Our policy on information gathering on which we consulted relates to our current statutory information gathering powers under which we are required to publish a policy. Those powers follow from the legislative process and have previously been consulted on by Government, during which one or more impact assessments were produced.

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<sup>102</sup> DCMS, October 2019. [Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services.](#)

- A1.16 We assessed the likely impact of our proposed changes in our July consultation and have replied to respondent comments in paragraphs 3.120 - 3.125 above. Overall, we consider that our changes are likely to improve the transparency, efficiency and robustness of our regulatory practices and will not create significant new burdens for our stakeholders.

## Equality impact assessment

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- A1.17 We have given careful consideration to whether our changes will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.<sup>103</sup>
- A1.18 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our [impact assessment guidance](#)).
- A1.19 We do not consider that any of the changes we have made will have any adverse equality impacts. As noted above, our changes should provide additional certainty and transparency to stakeholders, in particular in setting clear expectations around the process of issuing and responding to statutory information notices. This may have a positive impact on some equality groups that are involved in responding to statutory information notices, for example, individuals that are neurodiverse.

## Welsh language

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- A1.20 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the office of the Welsh Language Commissioner who regulates and monitors our work. Ofcom is required to take Welsh language considerations into account when formulating, reviewing or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).
- A1.21 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.
- A1.22 We will continue to issue some statutory information notices in Welsh, where required by Welsh stakeholders. We do not intend to translate our general policy into Welsh.

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<sup>103</sup> Further detail is set out in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.