

Your response

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<p>Question 1: Ofcom’s general approach to information gathering (Section 3 of the draft guidance)</p> <p>Do you have any comments on Ofcom’s proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?</p>	<p>N/A</p>
<p>Question 2: Information notices (Section 4 of the draft guidance)</p> <p>a) Information notices</p> <p>Do you have any comments on Ofcom’s proposed approach to the process for issuing and responding to information notices.</p> <p>b) Requiring a test</p> <p>Do you have any comments on our proposed approach to information notices that require recipients to perform a test?</p> <p>c) Remote viewing</p> <p>Do you have any comments on our proposed approach to Remote Viewing Information Notices? For example, to the factors that we may take into account when considering whether to issue a Remote Viewing Information Notice.</p> <p>d) Coroner Information Notices</p> <p>Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities</p>	<p>Confidential? – N</p> <p>We welcome that Ofcom has produced guidance on how it will execute its information gathering powers, particularly regarding how they may be used to support coroners. These new powers are an essential feature of the new regime, encouraging transparency and accountability across the tech industry, while also supporting coronial processes to help establish the full circumstances of a child's death.</p> <p>d) Coroner Information Notices</p> <p>Regarding how Ofcom will carry out its functions relating to s.101(1) of the Online Safety Act¹ – <i>Information in connection with an investigation into the death of a child</i> – as key principles, the aim of the guidance must be to:</p> <ol style="list-style-type: none"> 1. Support regulated services to understand how they should comply with such an order; 2. Support coroners to understand how their requests for information will be dealt with; and 3. Inform bereaved families who are going through the coronial process on Ofcom’s role in obtaining their child’s data. <p>Powers granted to the regulator to request data from tech companies on behalf of a coroner were campaigned for extensively by the Bereaved Families for Online Safety² – a group united by the tragic loss of their children as a result of harms in the digital world.</p> <p>The campaign aimed to ensure that the process of obtaining data during coronial investigations was made</p>

¹ [s.101\(1\), Online Safety Act 2023](#)

² See: 5Rights Foundation (2023) [Bereaved Parents for Online Safety secure access to data in campaign win](#)

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<p data-bbox="204 271 676 338">in connection with an investigation or inquest into the death of a child?</p> <p data-bbox="245 365 595 398">e) Naming a senior manager</p> <p data-bbox="204 421 660 607">Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?</p>	<p data-bbox="699 271 1369 656">easier and that future requests would be dealt with humanely. The inquest into the death of Molly Russell, which concluded that she had “died from an act of self-harm whilst suffering from depression and the negative effects of on-line content”,³ took nearly five years to complete. This is in part due to stonewalling from the tech companies in question, who obfuscated and delayed handing over data to the coroner, delaying the inquest and preventing her family from understanding what had happened.⁴</p> <p data-bbox="699 678 1382 981">While we recognise that Ofcom has a statutory consideration to undertake its duties proportionally, Ofcom and regulated services must make every effort to help facilitate the legal process and support coroners in their investigations. As a mediator, Ofcom must seek to make this process as swift as possible – particularly for bereaved families processing the catastrophic loss of a child.</p> <p data-bbox="699 1003 1382 1272">As this is guidance rather than an explanation of how Ofcom may execute these powers, the guidance would benefit from including a detailed information about how it will support services – of all sizes – to contribute to the legal process. Given the seriousness of a Coroner’s Information Request, it is essential Ofcom give detail on the following areas:</p> <p data-bbox="699 1294 1382 1608">Timing: Information must be provided in good time to the coroner and tech companies must not seek to obstruct or delay the legal process. This is crucial, particularly following the several years it took for coroners to obtain data in Molly Russell’s inquest, and it is also the expectation of bereaved families that timeframes for requests are clear and specific, and that they are communicated clearly.⁵</p> <p data-bbox="699 1630 1382 1776">The timing of data must also reflect the timeframe of an inquest more broadly. During the Molly Russell inquest, Meta handed over its first disclosure of information the night before the pre-inquest hearing and could not “be</p>

³ The Coroner’s Service (2022) [Molly Russell – Prevention of future deaths report](#)

⁴ Varney, M. (2022) [A family’s battle against the tech giants – Molly Russell’s inquest](#). Leigh Day.

⁵ Joint roundtable held with the Bereaved Families for Online Safety, 5Rights Foundation, NSPCC and Molly Rose Foundation

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	<p>reviewed in a long sitting and certainly not late at night.”⁶</p> <p>Capacity and size: Ofcom must support smaller services to comply with Coroner’s Information Requests. Again, whilst we recognise that proportionality is a legal consideration the regulator must have, debate around these powers reflected that it is crucial <i>all</i> regulated services in scope adhere to the regime. As noted by then-minister Lord Parkinson of Whitley Bay, “... small does not mean safe. All platforms will be required to comply with Ofcom’s request for information about a deceased child’s online activity.”⁷ Ofcom must ensure this is fully realised and ensure the legal process is as streamlined for coroners requesting data from small companies as is intended for large ones.</p> <p>Format: It is essential that tech companies provide coroners information in a format that is accessible and understandable to support the investigation.</p> <p>e) Naming a senior manager</p> <p>Ofcom’s power to name a senior manager is an important tool for accountability, but for the humane treatment of bereaved families who have also told us that they want humans to be involved earlier in adjacent complaints processes.⁸</p> <p>Owing to seriousness and sensitive nature of these requests, we recommend that Ofcom should, as a default position, require the naming of a senior manager in relation to Coroner’s Information Requests. As these requests are made in the context of a child’s death, we do not think this would be disproportionate.</p>
<p>Question 3: Skilled persons’ reports (Section 5 of the draft guidance)</p> <p>Do you have any comments on our approach to skilled persons’ reports? This might include when we might decide to require a skilled person’s</p>	<p>N/A</p>

⁶ Varney, [A family’s battle against the tech giants – Molly Russell’s inquest](#)

⁷ Lord Parkinson of Whitley Bay (22 June 2023) [Online Safety Bill, House of Lords Committee Stage \(10th Day\)](#)

⁸ Joint roundtable held with the Bereaved Families for Online Safety, 5Rights Foundation, NSPCC and Molly Rose Foundation

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<p>report, and the typical process that we propose to follow.</p>	
<p>Question 4: Interviews (Section 6 of the draft guidance)</p> <p>Do you have any comments on the section of guidance dealing with the power to require an individual to attend an interview?</p>	N/A
<p>Question 5: Entry with or without a warrant (Section 7 of the draft guidance)</p> <p>Do you have any comments on our proposed approach to entry either with or without a warrant? This might include the typical process and our interpretation of the requirement to have regard to the Home Office's code of practice on powers of entry.</p>	N/A
<p>Question 6: Audit (Section 7 of the draft guidance)</p> <p>Do you have any comments on our proposed approach to the power for Ofcom to carry out an audit to assess compliance?</p>	N/A
<p>Question 7: Consequences of failure to comply with an information power (Section 8 of the draft guidance)</p> <p>Do you have any comments on the potential consequences of a failure to comply with any of the information gathering powers covered in the draft guidance? This might be either on breaches that may be subject to enforcement action by Ofcom, or those that may constitute criminal offences.</p>	N/A

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Question 8: Additional comments Do you have any other comments on the draft guidance? Please provide any information or evidence in support of your views.	N/A

Please complete this form in full and return to OSinfoguidance@ofcom.org.uk