



Openreach's response to Ofcom's
"Consultation: Ofcom's general policy
on information gathering"

27 September 2024

On 18 July 2024, Ofcom published its consultation document entitled "*Ofcom's general policy on information gathering*" (the **Consultation**).

About Openreach

We're the people that make the net work.

Our wholesale broadband network – the UK's largest – supports more than 700 service providers like BT, SKY, TalkTalk, Vodafone and Zen to provide broadband, TV, phone, data and mobile services to their customers.

Any company can access our network through equal pricing, terms and conditions, and our 30,000 people help deliver services to every community in the UK.

Right now, we're investing £15bn to build a new [ultrafast, ultra-reliable Full Fibre broadband](#) network to 25 million homes and businesses by the end of 2026. We've already reached more than 14 million premises and we're passing thousands more every week. We've created 10,000 new jobs and we're retraining thousands of our existing engineers to help build, connect and maintain the new network.

Our new network will help Openreach and its customers to dramatically cut emissions, with research suggesting nationwide Full Fibre broadband could save 300 million commuter trips every year. We're also transitioning our van fleet to zero emissions by 2031.

We're a wholly owned and independent subsidiary of the BT Group and for the year up to the end of March 2024, we reported revenues of £6.077bn.

Openreach's general comments on Ofcom's proposals

1. Openreach welcomes the opportunity to comment on Ofcom's information gathering consultation. It is helpful that Ofcom publishes its policy and associated updates regarding information gathering, noting that this is underpinned by the requirements in the **Communications Act 2003** and other legislation in different market sectors. Providing transparency on the rationale and purpose of any changes to Ofcom's policy is a crucial element of enabling information request recipients to respond appropriately to such requests.
2. Openreach provides a wealth of information to Ofcom as part of Ofcom's monitoring and analysis of the telecommunications industry – for example in relation to Connected Nations report and market reviews.
3. Openreach takes **compliance with Statutory Information Requests (SIRs) very seriously**. This necessarily requires a great deal of time and resource to seek to ensure complete and accurate responses. Openreach operates a robust governance process to ensure that our responses to Ofcom's SIRs are complete, accurate and provided in a timely fashion. We provide regular, weekly and quarterly updates to the Openreach Executive to provide senior visibility of requests and to track progress against delivery of all responses.
4. Openreach works closely with **Ofcom's Information Registry Team** and very much values its role in coordinating formal and informal information requests and working with stakeholders on the timing of requests and feedback on information gathering.

Openreach's specific comments on Ofcom's draft policy on information gathering

5. Openreach has structured its response using the key themes identified by Ofcom at paragraph 3.12 of the consultation document. Where relevant, it also refers to specific sections of the draft policy annexed to the consultation.

Burden on stakeholders

6. SIRs often demand the provision of diverse types of information. This may range from responsive documents, data (which often needs to be manipulated), financial information and forecasts, with many of the questions requiring a degree of **manual**

input and collation. At the same time, Ofcom may issue multiple SIRs with overlapping response periods, especially during intensive periods of work such as market reviews.

7. Openreach understands that Ofcom requires a significant amount of data to inform its work, and recognises its own role as an important source of this data. However, while we are confident in our peer reviews, sampling and spot check procedures, the significant amount of work involved in responding to overlapping SIRs increases the risk of mistakes being made.
8. We encourage Ofcom to consider the reasonableness and proportionality of its information gathering processes across its entire work portfolio when sequencing SIRs and setting deadlines. A pragmatic approach is welcome when dealing with any potential information provision issues.
9. We note that the recent move to SIR deadlines of 9am can result in reduced timescales to respond. There have also been occasions when Ofcom has not taken account of factors such as bank holidays when setting deadlines, or has set a deadline for 9 am on a Monday morning. In this regard, we consider there may be an opportunity to widen the role of the information registry, to ensure there is appropriate sequencing of SIRs and that reasonable deadlines are in place and to channel any follow up questions via the Registry, noting they have the fuller picture of the impact of requests on stakeholders.

Transparency

10. We welcome Ofcom's statement on paragraph **A1.12** regarding the requirement to "*have regard to the principles under which our regulatory activities are transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.*" We would observe for large projects adhering to these principles appears to be challenging. As an example, for information requests requiring document trawls, the wording of some of the questions raised can be extremely wide, meaning that we have had to contact the Ofcom project team to get some clarifications on what our focus should be, and pragmatically agree the narrower scope. Whilst the draft stage of the process is helpful in this regard, given the large volume of requests, some questions have been overlapping (and indeed duplicative) and therefore we have referred Ofcom project teams to other responses. We suggest that the role of the Information Registry be expanded to help reduce duplication and overlap in the questions asked.

11. Openreach has previously provided information to Ofcom on a voluntary basis (and Ofcom has often used its formal powers to seek confirmation that the information is complete and accurate). We recognise that informal engagement can be very useful and welcome the example Ofcom provides of when this is appropriate (paragraph **A1.28**). However, we do not consider that Ofcom's use of informal information gathering is always confined to these types of scenarios. In practice, it can be used in circumstances where we are concerned that this process may provide a lesser degree of protection for sensitive or commercially confidential information. Where the information requested includes commercially sensitive information or any kind of customer information, we request that Ofcom send a formal notice.
12. Where Ofcom proposes to gather information informally, we would welcome the opportunity to discuss the appropriateness of this approach on a case by case basis, taking account of these concerns. We also request that Ofcom set out its view of how the information it gathers using this approach is protected, including any differences between the protections afforded to information provided in response to SIRs and information provided in response to informal requests. For example, paragraph **A1.62** explains that "*section 44 of the FOI Act exempts information from disclosure if its disclosure is prohibited under another enactment. This means that where we have gathered information relating to a particular business using our information gathering powers in certain legislation, we are prohibited from disclosing that information in response to a FOI request, unless we have that business' consent.*" Openreach invites Ofcom to explain its approach under the FOI Act to information it requests informally.
13. Openreach wholeheartedly agrees with Ofcom's statement in paragraph **A1.9** of the Consultation that "*information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.*" As an **evidence-based regulator**, it is essential that Ofcom and all stakeholders can rely upon accurate information as the basis for forming policies.
14. In relation to record retention and personal data, Openreach recognises that information is retained only whilst still required for the purpose requested by Ofcom. We understand that personal information may be requested to enable Ofcom to perform its statutory functions. It is important 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. Openreach is aware of its duty to provide requested information and will not contravene any UK data protection legislation in responding to SIRs. This may include anonymisation where necessary. It is helpful that Ofcom has declared that appropriate technical and

organisational measures¹ are in place to protect personal data and to prevent any unauthorised or unlawful processing and any accidental loss, destruction, or damage to it.

15. We note Ofcom's commitment to ensuring that the information we provide is appropriately protected (paragraph **A1.72**). This is an issue of particular importance to Openreach, and we welcome this commitment.

Draft SIRs

16. Openreach considers use of draft SIRs to be a valuable part of the end to end process. Having visibility of the questions and timescales in advance of the final SIR enables stakeholders to: ensure understanding of the questions posed; identify potential sources of the information required; and to check if the data/information required can be provided in the timescales. At the same time, draft SIRs enable Ofcom to ensure its questions are as well targeted and precisely focussed as possible, and enable stakeholders to provide complete, accurate and objective responses.

"One size fits all"

17. Openreach agrees with Ofcom's intention that its policy should achieve three main goals as set out at paragraph **A1.2** of the Consultation. In particular, wherever possible, it is helpful that the policy is consistent across different legislation, noting that Ofcom reserves the right to deviate from its policy in appropriate circumstances. Where such deviation is necessary, we would welcome a clear rationale for so doing.
18. Ofcom states (at paragraph **A1.48**) that where it has obtained information for a specific purpose, it may wish to use that information for a different purpose. We agree with Ofcom that it is important that it seeks the information provider's consent before doing this. We note, however, that we may respond to SIRs in a way which is tailored to the purpose of the question (for example where the question is broadly drafted), generally through discussions with the Ofcom case team. In these circumstances, if the information is to be re-used for a different purpose, Ofcom must recognise this and, in those circumstances, should send a new SIR.

¹ [General Privacy Statement – How we handle your personal data - Ofcom](#)