

Ofcom reference: 1-123462101

18 September 2009

Heather Brooke

By email: request-15290-942ba085@whatdotheyknow.com

Dear Ms Brooke

Freedom of Information: Right to know request

Thank you for your request for information where you have asked for the following:

"Under the Freedom of Information Act I seek a copy of your register of gifts and hospitality. Specifically I would like to obtain a complete record of all the gifts and hospitality offered to, or accepted by, officials of Ofcom.

Please provide a copy of the register or its contents for the past two years. I would prefer to receive this information electronically.

The usual format for these registers is in an excel spreadsheet with the following field categories: • Date of gift/hospitality offered, • Date accepted • Recipient's name • Donor's name (individual and/or company) • Type of gift/hospitality • Value"

Ofcom received your request on 28 July 2009 and has considered it under the Freedom of Information Act 2000 ('the Act'). We informed you on 25 August 2009 that we required additional time because some of the information requested was considered under exemptions to which a public interest test applies. We have now reached our decision.

Please find attached the information you have requested.

Please note that Ofcom's gifts policy for this period was for colleagues to donate any gift valued at over £25 (or the cash equivalent) to charity.

The names of the individuals from the organisations which have provided gifts or hospitality are withheld under the exemptions permitted in section 36 and 40(2) of the Act.

Section 36 relates to information that would or would likely prejudice the effective conduct of public affairs, which includes inhibiting the free and frank exchange of views. In applying this exemption we needed to balance the public interest in withholding the information against the public interest in disclosing the information as set out in Annex B. In the letter in Annex A, Graham Howell as a "qualified person", according to the terms of the Act,

confirms that in his reasonable opinion it is not in the public interest for Ofcom to disclose the information you requested.

We also consider that the names of individuals from the organisations which have provided gifts and hospitality constitute personal information exempt from disclosure as outlined in section 40(2) and section 40(3)(a)(i) of the Act.

We note your request of 27 August 2009 for an internal review of our decision to extend the period for responding to your request in order to consider exemptions to which the public interest test applies. As explained by Jonathan Ayres on 3 September 2009, our advice from the Information Commissioner was not to proceed with that review until we had made our substantive response to your request. Please inform us whether you wish us to proceed with that internal review in the light of the information provided in this response.

Please ensure that when using the provided information in any way, including publishing the information, you comply with all relevant legislation. For example, the information provided may be protected by copyright under the Copyright, Designs and Patents Act 1988 (as amended). If in doubt, please seek independent legal advice. For Ofcom's policy on copyright and related issues, please refer to our website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>.

If, having read this information, you have any queries, please let me know. Please quote the reference number above in any future correspondence.

Yours sincerely



Eleanor Berg

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case, but we aim to conclude all internal reviews within 2 months. If you wish to request an internal review, you should contact:

Graham Howell
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Freedom of Information: Right to know request

Section 36 exemption

The information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act.

I am a "qualified person" as defined in section 36(2) of the Freedom of Information Act 2000 and duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so would or would be likely to prejudice the effective conduct of public affairs.

Also, in applying this exemption I have had to balance the public interest in withholding the information against the public interest in disclosing the information.

I have set out in Annex B the exemption in full, as well as the factors I considered when deciding where the public interest lay.

If you have any queries about this letter, please contact information.requests@ofcom.org.uk.

Signed 

Date 18 September 2009

Graham Howell

Secretary to the Corporation

Ofcom

Annex B

Section 36: Prejudice to Effective Conduct Of Public Affairs

Section 36 applies to information held by a government department or by the Welsh Assembly government which is not exempt under section 35 and to information which is held by any other public authority.

Section 36(2)(b) and (c) exempts information held by a public authority whose disclosure would, or would be likely to, inhibit:

- the free and frank provision of advice,
- the free and frank exchange of views for the purposes of deliberation; or

would otherwise prejudice, or be likely otherwise to prejudice, the effective conduct of public affairs.

Key points:

- Section 36 can only be used if, in the **reasonable view of a "qualified person"**, disclosure of the requested information would have one of the specified effects.
- The application of section 36 is subject to a public interest balance.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none">• The desirability of citizens being confident that decisions are taken on the basis of the best available information and in accordance with best practice;• The benefit to citizens of being aware of how Ofcom interacts with stakeholders outside formal processes;	<ul style="list-style-type: none">• Ofcom, as a sector regulator, relies upon its on-going relationship with stakeholders. stakeholders would be less willing to come forward and discuss issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that their personal details could be made public;• The release of stakeholders' names could have a detrimental effect on these stakeholders participating to the extent necessary for other regulation matters, and could prevent other stakeholders from having the confidence to raise issues with Ofcom in the future in case such

	<p>approaches were disclosed;</p> <ul style="list-style-type: none"> • This could lead to a “chilling effect” where initial policy proposal formulation and advice in that regard, obtained both internally and externally, are not as detailed, wide-ranging or bold as they need to be in order to ensure that such proposals are developed robustly in accordance with Ofcom’s statutory duties.
<p>Reasons why public interest favours withholding information</p>	
<p>A consequence of disclosure would be that stakeholders would be less likely to come forward and discuss important policy issues, and be less open, with Ofcom. Ofcom would therefore be less able to gauge stakeholders’ views as to how effective its regulation is. This would in turn lessen Ofcom’s ability to meet its statutory obligations to ensure its regulation is effective and appropriate, and would be against the public interest.</p>	