

Reference: 1088539

Julia Snape
Information Rights
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5 February 2021

Freedom of Information: Right to know request

Thank you for your request for information about advice given by Stonewall and other advice sought by Ofcom.

We received this request on 21 December 2020 and have considered it under the Freedom of Information Act 2000 ('the FOI Act').

You asked:

Under the Freedom of Information Act, please provide:

Submissions made to, and feedback received from, the Stonewall Workplace Equality Index in the three most recent years Ofcom took part the scheme. Submissions and feedback should be provided for the year the index was published, even if the feedback was provided the previous year.

Background

Before responding to your request, it may be helpful to briefly explain the different capacities in which Ofcom engages with Stonewall:

- In the context of our responsibilities as an employer, we engage with Stonewall on our internal diversity and inclusion work, for example through our participation in the Stonewall Workplace Equality Index.
- In the context of our regulatory role in relation to diversity in the broadcasting sector, we have some contact with Stonewall, as well as a variety of other organisations, as part of our work with broadcasting stakeholders to improve the diversity of workforces in that sector.
- In the context of our role as the UK's broadcasting content regulator. In this area our regulatory role requires us to apply standards that provide adequate protection to audiences from the inclusion of offensive and harmful material (which we enforce by way of the Ofcom [Broadcasting Code](#)).¹ Ofcom is an independent regulator. No third party directs, or otherwise advises, Ofcom on how it exercises its statutory functions relating to broadcast standards. However, as an open regulator, Ofcom does engage with a range of different

¹ If you would like to learn more about Ofcom's Broadcasting Code and published guidance for broadcasters, please visit: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/guidance-for-tv-broadcast-licensees>

organisations to gather input and perspectives on all aspects of diversity in broadcasting, including issues that broadcasters may seek to make programmes about.

Ofcom's Chief Executive recently had an introductory meeting with the CEO of Stonewall on 24 November 2020. At this meeting one of the topics raised by the CEO of Stonewall was the coverage of trans issues by broadcasters. As part of our ongoing stakeholder engagement, there are likely to be future discussions with Stonewall about this issue. We also expect to continue our discussions with a range of other organisations to gather input and perspectives on all aspects of diversity in broadcasting. For example, we are also in conversation with the LGB Alliance on trans issues, an organisation which is widely recognised to have a very different viewpoint to that of Stonewall.

Our response

We have now conducted searches for information responsive to your request.

In the context of our responsibilities as an employer, we have legal duties under the Equality Act 2010, under which sexual orientation and gender reassignment are "protected characteristics". We have received guidance and views from a range of diversity organisations, including Stonewall as part of our membership of the Diversity Champions programme, to enable us to promote equality and inclusion in the workplace for Ofcom colleagues with protected characteristics. All decisions on our internal policies and procedures are made through our own governance structures and in consultation with employees.

Ofcom has taken part in the Stonewall [Workplace Equality Index](#) and has been ranked in the three most recent years as follows:

- In 2020 – 111
- In 2019 – 183
- In 2018 – 144

We note that Stonewall does not publish the criteria and detailed questions against which participants are assessed in the Stonewall Workplace Equality Index. These criteria are made available to participating organisations, the same approach taken by other organisations that run benchmarking initiatives, and the criteria are refreshed every three years. However, Stonewall does publish the top 100 ranking UK employers each year, and lists the evaluation criteria with case studies from a range of organisations. For more information, please see <https://www.stonewall.org.uk/what-best-employers-do>

We are unable to disclose the submissions made by Ofcom to the Stonewall Workplace Equality Index, or any feedback received from Stonewall on these submissions.

These documents include information about the service that Stonewall provides in connection with the Stonewall Workplace Equality Index, which we consider falls under the exemption in section 43 of the FOI Act. Section 43 deals with the exemption of information that would prejudice the commercial interests of a person or company. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the

information. **Annex A** to this letter sets out the exemption in full, as well as the factors Ofcom considered for and against disclosure of the information requested.

These documents, including Ofcom's submissions, include information concerning Ofcom's internal management as an employer in relation to diversity and inclusion issues. We are unable to disclose this information as we consider it is exempt under section 36 of the FOI Act, for the reasons set out in **Annex C** to this letter. In **Annex B** to this letter, Ofcom's Corporation Secretary confirms that the exemption is engaged.

The information captured by the request also contains the names of a number of Ofcom colleagues and third parties. We consider that this information is exempt under Section 40(2) of the FOI Act which provides that personal information about persons other than the requester is exempt where its disclosure would contravene any of the data protection principles in the General Data Protection Regulation and the Data Protection Act 2018. Section 40 is an absolute exemption under the FOI Act and does not require a public interest test. Other exemptions may apply.

I hope this information is helpful. If you have any further queries, then please send them to information.requests@ofcom.org.uk quoting the reference number above in any future communications.

Yours sincerely,

Julia Snape

Annex A

<p>Section 43(2) of the FOI Act states:</p> <p><i>“Information is exempt information if its disclosure under this part of the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”</i></p>	
<p>Factors for disclosure</p>	<p>Factors for withholding</p>
<ul style="list-style-type: none"> Enabling the public to gain a better understanding of Ofcom’s engagement with, and advice obtained from, external stakeholders such as Stonewall on issues of diversity, and the nature of the services provided, and thereby increasing public trust in how Ofcom operates as an employer. 	<ul style="list-style-type: none"> In the context of our responsibilities as an employer, Ofcom engages with a number of different organisations on our diversity and inclusion work, including Stonewall. The ability of Stonewall to conduct its business activities would be diminished if information about the products and services it provides in connection with the Stonewall Workplace Equality Index were made publicly available. Therefore, their commercial interests would be prejudiced. We need to be able to freely discuss and engage with external organisations to ensure that we are satisfying our obligations under the Equality Act 2010. To release the commercially sensitive information of an external organisation that advises us in this capacity would potentially impair Ofcom’s relationship with Stonewall and other organisations with which we engaged on diversity issues.
<p>Reasons why public interest favours withholding information</p>	
<ul style="list-style-type: none"> Ofcom enjoys a positive relationship with external organisations like Stonewall. The release of this information about the products and services provided by Stonewall in connection with the Stonewall Workplace Equality Index into the public domain would, or would be likely to, prejudice the commercial interests of Stonewall and impair Ofcom’s relationship with Stonewall and other organisations with which we engage on diversity issues. If organisations providing services relating to education around diversity could not be confident that such information provided by them to Ofcom would be withheld from disclosure, their commercial activity may be impeded. The potential prejudice to commercial interests outweighs the public interest in disclosure of this information. 	

Annex B

Freedom of Information: Right to know request

Section 36 exemption

Some of the information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act 2000 (the Act).

I am a "qualified person" as referred to section 36(2) of the Act 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 prejudice the effective conduct of public affairs.

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 in relation to the information concerned. If you have any queries about this letter, please contact information.requests@ofcom.org.uk.

Signed 

Date.....5 February 2021.....

Corporation Secretary

Annex C

Section 36: Prejudice to effective conduct of public affairs

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation, or
- otherwise 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.
- In this case it is considered that disclosure would prejudice the effective conduct of public affairs.
- 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 general desirability that Ofcom’s activities as the UK’s communications regulator and employer are transparent. • Transparency of Ofcom’s engagement with external stakeholders, such as Stonewall, on issues of diversity may lead to greater awareness of, and trust in, how Ofcom operates as an employer and how it performs its duties. 	<ul style="list-style-type: none"> • The information concerned relates to Ofcom’s internal management, strategies and policies relating to diversity and equality issues, in particular those relating to trans issues. In order to run the organisation effectively, Ofcom colleagues need to be able to communicate and internally discuss the feedback provided by Stonewall on its submissions to the Stonewall Workplace Equality Index. The threat of disclosure of this feedback and the content of Ofcom’s submissions to Stonewall would inhibit the ability of Ofcom to respond to this feedback and meet its obligations as an employer effectively in future. • In publishing annual reports on its Diversity and Inclusion programme, Ofcom meets any requirements of transparency in relation to its internal policies and strategies relating to trans issues. Ofcom needs to be able to engage in free and frank discussions, both among senior management and with

	colleagues, to enable it to develop and publish such a report.
Reasons why public interest favours withholding information	
<ul style="list-style-type: none"> • We consider that the public interest in disclosure is outweighed by the need for Ofcom colleagues to have the ability to freely consider and respond to the feedback provided by Stonewall in response to its submission to the Workplace Equality Index, and to build on its existing policies and strategies relating to trans issues. • The disclosure of the requested information – including information of the nature described above – would therefore not further the public interest but rather, may hinder it because of the detriment it would have on Ofcom’s ability to operate internally as an organisation and meet its obligations as an employer. 	

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

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 responding to internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact information.requests@ofcom.org.uk.

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