

Email

ICO Case Reference: IC-27...

Regarding

Worked By

Status Reason

S...



Activity Marker



Direction



O...



Email

From

ICO Casework

To

Information.requests@ofcom.org.uk

Cc

Subject

ICO Case Reference: IC-272633-S1X6

Display Name

ico-pa case accepted

Date Received

06/12/2023 17:50

Email Address

6 December 2023

Dear OFCOM,

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Complaint from

Your reference: 01653764

Our reference: IC-272633-S1X6

This complaint has been accepted as eligible for formal consideration.

Investigation of this complaint will, in all likelihood, look at section 1, that the complainant believes you hold more information than you have located.

Once the complaint has been allocated to a case officer, they will proceed to a decision notice or contact you directly if they require further information.

Please be aware that whilst submitted emails are monitored, any detailed enquiries relating to the case will not be addressed until it has been allocated to a case officer for investigation. For more general enquiries, please call our helpline on 0303 123 1113.

Sent on behalf of



Information Commissioner's Office

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



T. 0303 123 1113 ico.org.uk twitter.com/iconews

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For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice.

Please be aware we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the data protection laws and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will withhold information where there is a good reason to do so.

ATTACHMENTS

File Name	Followed	File Size (Byte...)	
 There are no Attachments to show in this view. To get started, create one or more Attachments.			
0 - 0 of 0 (0 selected)			Page 1

Email

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Email

From

ICO Casework

To

Information.requests@ofcom.org.uk

Cc

Subject

ICO Case Reference: IC-272633-S1X6

Display Name

ICO to PA req add info by 27.3.24

Date Received

13/03/2024 10:59

Email Address

13 March 2024

Case Reference: IC-272633-S1X6

Dear Sir/Madam

Please find attached a letter in relation to complaint. This is requesting Ofcom to provide the ICO with additional information and a response is required no later than 27 March 2024.

If you have any questions or concerns, please do not hesitate to contact me.

Yours faithfully,

Information Commissioner's Office

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

T. ico.org.uk twitter.com/iconews

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ATTACHMENTS

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ICO tto PA requesting additional in... No

98,106

1 - 1 of 1 (0 selected)

Page 1

Freedom of Information Team
Ofcom
Information.requests@ofcom.org.uk

13 March 2024

Dear Sir/Madam

Re: Freedom of Information Act 2000
[REDACTED]
Information request dated 21 August 2023
ICO ref: IC-272633-S1X6
Your ref: 01653764

I have been allocated [REDACTED] complaint concerning Ofcom's handling of his information request dated 21 August 2023. This letter will set out what information I now need from Ofcom and the timeframe in which this is required.

[REDACTED] requested Ofcom to disclose the following information:

- "1) Whether an investigation has been carried-out by Ofcom into the complaints raised under Ofcom complaints reference nos. 01565823 and 02566633, and, if not, whether any former BBC employees were involved in the decision not to investigate;
- 2) whether, in relation to whichever of these two complaints relates to Canadian trucker protest coverage, Ofcom requested the BBC to supply the relevant audiovisual footage;
- 3) all guidelines and instructions issued to all Ofcom caseworkers, including those who review the decisions and responses of others, on how to deal with complaints of (a) bias and (b) inaccuracy (whether specific to the BBC or not) including the criteria used to determine whether or not to launch an investigation."

At this time, I am of the view that I cannot assist with parts 1 and 2 because it appears what he is asking for is information which may not have fallen within the scope of his original request. This may however change if [REDACTED] challenges this and provides evidence to the contrary.

So for the time being I am only looking at part 3 of the request. [REDACTED] believes Ofcom holds further recorded information falling in the scope of this element of his request, to that which has already been disclosed.

In his correspondence to the Commissioner he has said that Ofcom has referred him to its published procedures available on its website. [REDACTED] maintains that this is not what he asked for. He asked for all guidelines and instructions issued to caseworkers. [REDACTED] confirmed that he finds it hard to believe that caseworkers will only refer to those published procedures (and no other internal guidelines/ instructions or resources available to them) when considering complaints about bias/fairness or inaccuracy.

In relation to this element of the request, please can Ofcom explain exactly what recorded information is held – both that which is available on its website and the internal guidance, resources and instructions it holds for its caseworkers to use when considering complaints of bias and inaccuracy.

- 1) Does Ofcom hold more recorded information to that disclosed or directed to?
- 2) If not why not? Please explain in detail what searches have been carried out and what the results of those searches are.
- 3) If it does, please describe what this is and whether it can be disclosed to him? If it can, please proceed to do that by the deadline below and copy me in to that correspondence.
- 4) If not, why not and I will need a copy of any withheld information and detailed submissions, explaining why this information is exempt under FOIA.

I would be grateful if you would provide this information as soon as possible and in any event no later than 27 March 2024.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Yours sincerely

[REDACTED]

Email

FW: ICO complaint - [REDACTED]...

Regarding

Worked By

Status Reason

R...



Activity Marker



E... Direction



I...



Email

From



To

ICO Casework

Cc

Subject

FW: ICO complaint - [REDACTED] ICO Case Reference: IC-272633-S1X6

Display Name

Date Received

18/03/2024 19:14

Email Address

[REDACTED]@ofcom.org.uk

External: This email originated outside the ICO.

Classification: CONFIDENTIAL

Dear [REDACTED]

Thank you for your email and attachment dated 13 March.

Due to staff absence, we would appreciate an extension to the deadline. Can I suggest 10 April?

Kind regards



Email

RE: EXTERNAL:Your email...

Regarding

Worked By

Status Reason

R...



Activity Marker



E... Direction



L...



Email

From



To

ICO Casework

Cc

Subject

RE: EXTERNAL:Your email to the ICO - Case Reference IC-272633-S1X6

Display Name

Date Received

19/03/2024 10:19

Email Address

@ofcom.org.uk

External: This email originated outside the ICO.

Dear

Thank you for the extension till 8 April. It is much appreciated.

Kind regards

From: icocasework <icocasework@ico.org.uk>

Sent: Tuesday, March 19, 2024 7:18 AM

To: @ofcom.org.uk

Subject: EXTERNAL:Your email to the ICO - Case Reference IC-272633-S1X6

CAUTION: This email originated outside your organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

19 March 2024

Case Reference: IC-272633-S1X6

Dear

Thank you for your email of 18 March 2024.

In these circumstances, I can allow an extension to 8 April 2024 but no later (5 additional working days only). Following that I will have to issue

an Information Notice.

I hope this is helpful.

Yours sincerely,

[Redacted signature]

Information Commissioner's Office

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

T. [Redacted] ico.org.uk twitter.com/iconews

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Email

RE: EXTERNAL:Your email...

Regarding

Worked By

Status Reason

R...



Activity Marker



E... Direction



I...



Email

From



To

ICO Casework

Cc

Subject

RE: EXTERNAL:Your email to the ICO - Case Reference IC-27263 3-S1X6

Display Name

Date Received

08/04/2024 17:20

Email Address

[Redacted]@ofcom.org.uk

External: This email originated outside the ICO.

Dear [Redacted]

Please find attached our response.

Kind regards

[Redacted signature]

For more information visit www.ofcom.org.uk

This email (and any attachments) is confidential and intended for the use of the addressee only,

If you have received this email in error please notify the originator of the message and delete it from your system.

This email has been scanned for viruses. However, you open any attachments at your own risk.

Any views expressed in this message are those of the individual sender and do not represent the views or opinions of Ofcom unless expressly stated otherwise.

Reference: 1732294

8 April 2024

Information Requests
information.requests@ofcom.org.uk

Information Commissioner's Office

Dear

Freedom of Information Act 2000

Information request dated 21 August 2023

ICO ref: IC-27263351X6

Our ref: 01653764

Re: All guidelines and instructions issued to caseworkers.

I refer to the above matter and to your letter dated 13 March 2024.

I would like to assure you that Ofcom takes its obligations under the Freedom of Information Act 2000 ("FOIA") seriously. We have carefully considered the specific questions outlined in your letter of 13 March and have sought to address these by way of our response below.

ICO Questions

In his correspondence to the Commissioner he has said that Ofcom has referred him to its published procedures available on its website. maintains that this is not what he asked for. He asked for all guidelines and instructions issued to caseworkers. confirmed that he finds it hard to believe that caseworkers will only refer to those published procedures (and no other internal guidelines/ instructions or resources available to them) when considering complaints about bias/fairness or inaccuracy.

In relation to this element of the request, please can Ofcom explain exactly what recorded information is held – both that which is available on its website and the internal guidance, resources and instructions it holds for its caseworkers to use when considering complaints of bias and inaccuracy.

1) Does Ofcom hold more recorded information to that disclosed or directed to?

2) If not why not? Please explain in detail what searches have been carried out and what the results of those searches are.

3) If it does, please describe what this is and whether it can be disclosed to him? If it can, please proceed to do that by the deadline below and copy me in to that correspondence.

4) If not, why not and I will need a copy of any withheld information and detailed submissions, explaining why this information is exempt under FOIA.

Our Response

We can confirm that Ofcom does not hold further recorded information in relation to the matters referred to above than that which [REDACTED] was previously directed to and/or provided with.

The publicly available information on Ofcom's website, which [REDACTED] was directed to (including the Broadcasting Code and Ofcom's complaints procedures), is the recorded information used by Ofcom colleagues when considering complaints, such as those in relation to bias, fairness and/or inaccuracy. In terms of decision making on individual cases, in addition to the published policy and guidance documents referred to above, colleagues take into account, where relevant and appropriate, previous decisions in similar cases. These cases are published on Ofcom's website in our Broadcast and On Demand Bulletins.¹ For the avoidance of doubt, Ofcom colleagues do not refer to any recorded, but unpublished, information when considering complaints.

Ofcom holds one set of policies and guidance, which are published, as to do otherwise would be contrary to the principles of transparency and fairness. Holding unpublished policies and guidance would also be contrary to our regulatory principles, a key principle being that our regulatory interventions are transparent in both deliberation and outcome.² Moreover, as the Commissioner will be aware Ofcom is prohibited by public law principles from operating unpublished policies which are inconsistent with those which it publishes.³

In light of the above, we can confirm that searches have not been carried out, as further information simply does not exist as explained above. We therefore do not have any further information that we can provide to [REDACTED] or to the Commissioner.

We hope that this information is helpful. Please let us know if you have any further questions.

Yours sincerely

[REDACTED]

¹ <https://www.ofcom.org.uk/about-ofcom/bulletins/broadcast-bulletins>

² <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines>

³ R (Lumba) v Secretary of State for the Home Department [2013] 1 AC 24

Email

ICO Case Reference: IC-27...

Regarding

Worked By

Status Reason

S...



Activity Marker



Direction



O...



Email

From ICO Casework

To Information.requests@ofcom.org.uk

Cc @ofcom.org.uk

Subject ICO Case Reference: IC-272633-S1X6 Service of Decision Notice for the attention of

Display Name ICO to PA service of DN

Date Received 25/04/2024 13:23

Email Address

25 April 2024

Case Reference: IC-272633-S1X6

Dear

Please find attached the Commissioner's decision notice in respect of complaint.

Yours sincerely,

Information Commissioner's Office

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

T. @ico.org.uk twitter.com/iconews

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ATTACHMENTS

File Name	Followed	File Size (Byte...)	
DN covering letter to Head of PA.pdf	No	86,760	

DNIC-272633-S1X6 .pdf

No

75,231

1 - 2 of 2 (0 selected)

Page 1

[REDACTED]
Ofcom

25 April 2024

Dear [REDACTED]

Freedom of Information Act 2000 (FOIA)

Complainant: [REDACTED]

Address: [REDACTED]

Case Reference Number: IC-272633-S1X6

Please find attached a decision notice relating to a complaint from [REDACTED]
[REDACTED]

The complaint has been considered by the Commissioner and the decision notice sets out the reasons for the decision. If you disagree with the decision notice you have the right to appeal to the First-tier Tribunal (Information Rights).

The Commissioner will publish this decision on the ICO website, but will remove all names and addresses of complainants. If you choose to also reproduce this decision notice, then the Commissioner expects similar steps to be taken.

I hope the above information is helpful.

Yours sincerely

[REDACTED]

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2024

Public Authority: Ofcom

Address: Riverside House, 2A Southwark Bridge Road,
London, SE1 9HA

Decision (including any steps ordered)

1. The complainant has requested Ofcom to disclose information relating to two complaints raised with it about the BBC. Ofcom disclosed the recorded information it holds.
2. The complainant disputed that all the recorded information Ofcom holds has been disclosed. The Commissioner's decision is that on the balance of probabilities Ofcom does not hold any further recorded information to that already provided. He does not require any further action to be taken.

Request and response

3. The complainant wrote to Ofcom (correspondence received on 31 July 2023) and requested information in the following terms:

""1) Whether an investigation has been carried-out by Ofcom into the complaints raised under Ofcom complaints reference nos. 01565823 and 02566633, and, if not, whether any former BBC employees were involved in the decision not to investigate;

2) whether, in relation to whichever of these two complaints relates to Canadian trucker protest coverage, Ofcom requested the BBC to supply the relevant audiovisual footage;

- 3) all guidelines and instructions issued to all Ofcom caseworkers, including those who review the decisions and responses of others, on how to deal with complaints of (a) bias and (b) inaccuracy (whether specific to the BBC or not) including the criteria used to determine whether or not to launch an investigation.”
4. Ofcom responded on 21 August 2023. It provided a response to each element of the request. In relation to question one, it addressed the two complaint references and explained what had happened and outlined the specific issue number of its Broadcast and On Demand Bulletin where each decision was reported. It confirmed that no former BBC employees were involved in the decision on either case. In respect of question two, it confirmed that Ofcom obtained a recording of all the relevant material from the BBC. Concerning question 3, it directed the complainant to its published procedures and section 5 of the Broadcasting Code.
 5. The complainant wrote to Ofcom to request an internal review. This was received by Ofcom on 20 September 2023. They raised concerns with questions one and three of their request.
 6. Ofcom carried out an internal review and notified the complainant of its findings on 18 October 2023. It provided further explanation in relation to question one but essentially upheld its handling of the information request under FOIA.

Scope of the case

7. The complainant wrote to the Commissioner on 9 November 2023 to complain about the way their request for information had been handled. They raised concerns with Ofcom’s handling of all three questions. In relation to question one they asked to be provided with specific bulletins, referenced in the additional explanation Ofcom provided about the publication of the outcome of the complaints referred to in question one. For question two they asked to know exactly what footage was obtained and to know more specifically if the footage from the 11:12 broadcast had been obtained. In respect of question three, they disputed that they had been provided with all the recorded information Ofcom holds and confirmed that they felt caseworkers must refer to other internal guidelines or instructions when considering complaints about bias/fairness or inaccuracy.
8. The Commissioner wrote to the complainant on 14 March 2024 to set out the scope of his investigation. He informed the complainant that their request for specific bulletins and to know exactly what footage was obtained does not fall within the scope of their original request. The complainant was advised that these were new requests for additional

information and they would need to be submitted to Ofcom as new requests in the first instance.

9. The Commissioner advised the complainant that he could therefore only consider question three and whether Ofcom holds any further recorded information to that already provided. This has been the scope of his investigation and the following section of this notice will outline the Commissioner's decision.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
11. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
12. The Commissioner made the necessary enquiries to Ofcom and it confirmed that it does not hold any further recorded information in connection with question three of the request. It only holds the information it has already directed the complainant to.
13. It stated that the publicly available information on its website, to which it directed the complainant, is the only recorded information it holds and used by Ofcom colleagues when considering complaints, such as those of bias, fairness and/or inaccuracy. In terms of decision making on individual cases, in addition to the published policy and guidance documents, colleagues may take into account, where relevant and appropriate, previous decisions in similar cases. These cases are published on Ofcom's website in its Broadcast and On Demand Bulletins. Ofcom advised, for the avoidance of doubt, Ofcom colleagues do not refer to any recorded, but unpublished, information when considering complaints.
14. Ofcom said that it holds one set of policies and guidance, which are published, as to do otherwise would be contrary to the principles of transparency and fairness. Holding unpublished policies and guidance would also be contrary to its regulatory principles, a key principle being

that its regulatory interventions are transparent in both deliberation and outcome. Furthermore, it commented that Ofcom is prohibited by public law principles from operating unpublished policies which are inconsistent with those which it publishes.

15. Ofcom concluded by saying that it has not therefore carried out any further searches, as it is absolutely certain for the reasons given above that no further recorded information exists.
16. The Commissioner is satisfied that on the balance of probabilities Ofcom does not hold any further recorded information falling within the scope of question three of the complainant's request. It has explained sufficiently the exact recorded information it holds and what information caseworkers will use and consult when making decisions on individual cases. It has confirmed that everything that it does hold is published on its website and it directed the complainant to that information.
17. There is no reason to doubt Ofcom's position in this case and the Commissioner has received no evidence to the contrary.
18. For the above reasons, the Commissioner is satisfied that Ofcom has complied with the requirements of FOIA and therefore no further action is required.

Right of appeal

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.



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