

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 September 2020

**Public Authority:** The Office of Communications (Ofcom)

**Address:** Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

#### Decision (including any steps ordered)

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1. The complainant has requested information about Ofcom's assessment of a complaint about the BBC that he had submitted to it. Ofcom's position is that it does not hold the information the complainant is seeking.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities Ofcom does not hold the requested information and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require Ofcom to take any remedial steps.

#### Background

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4. In April 2019 the complainant had submitted a broadcasting complaint to Ofcom about the BBC's 'Sports Personality of the Year' programme. The complaint had been through the full BBC complaints process and the complainant provided Ofcom with a copy of correspondence he had received from the BBC's Executive Complaints Unit on that matter.
5. In May 2019 Ofcom advised the complainant that their complaint about the BBC would be assessed and the outcome published in issue 379 of Ofcom's *Broadcast and On Demand Bulletin*.

6. The complainant did not consider the level of information published in that Bulletin was sufficient. In addition to the FOIA request below which concerns Ofcom's assessment of his broadcasting complaint about the BBC, the complainant also submitted a service complaint to Ofcom about its own procedures. The service complaint was escalated, and Ofcom's Corporation Secretary wrote to the complainant with a final decision about that matter on 19 August 2019.

## Request and response

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7. On 19 June 2019 the complainant wrote to Ofcom and requested information in the following terms:

*"... a copy of the formal assessment of my complaint and the reasons not to investigate it, how it did not meet the criteria required to do so."*

8. Ofcom responded on 12 July 2019. Ofcom advised that under its *Procedures for investigating breaches of content standards for television and radio* ('the Procedures') it does not normally correspond with individual complainants as to the outcome of their complaints. On this occasion, however, it said that it would like to be as helpful as possible.
9. Ofcom explained that complaints about content standards are assessed in accordance with its Procedures. Ofcom said it reviews every complaint it receives to make an initial assessment. It also reviews the relevant broadcast to consider whether it raises potentially substantive issues under the Ofcom Broadcasting Code, which would warrant investigation by Ofcom. When assessing material under the Code, in addition to considering material against the requirements of the relevant Code rules, Ofcom said it also takes account of other relevant factors such as: its published Guidance on the Code; precedent cases; and audience research.
10. Ofcom went on to explain that if it considers these rules may have been broken it works swiftly to investigate. If it concludes its rules have been broken, it has the power to impose sanctions on broadcasters. Decisions about complaints it has received are published every fortnight in its *Broadcast and On Demand Bulletin*.
11. With regard to the complainant's FOIA request, Ofcom said that it made its decision not to investigate the complainant's complaint about the 'Sports Personality of the Year' programme after it had reviewed the programme and the correspondence to the complainant from the BBC's Executive Complaints Unit.

12. Ofcom said it had considered the concerns the complainant had raised and assessed the programme under Rule 2.13 of the Broadcasting Code, which states:

*“Broadcast competitions and voting must be conducted fairly.”*

13. In Ofcom’s view, there were not sufficient grounds to suggest the voting was not conducted fairly. Ofcom therefore concluded that the broadcast did not raise issues which warranted investigation by Ofcom under the Code.
14. Ofcom told the complainant that it holds a ‘closure note’ recording the closure of his complaint. It advised that these notes are wholly internal records and are generally exempt from disclosure under section 36 of the FOIA, which concerns prejudice to the conduct of public affairs. Ofcom acknowledged that the closure note in this case did not fall within the scope of the complainant’s request as it was not a formal assessment of his complaint.
15. Following an internal review Ofcom wrote to the complainant on 4 October 2019. It maintained its position that it does not hold the information the complainant is seeking. Ofcom also advised that if a closure note were to requested under the FOIA, it considered it would be exempt from disclosure under both section 36 and section 44, which concerns prohibitions on disclosure.
16. On 18 March 2020 Ofcom wrote to the complainant and explained that, due to the particular circumstances of his case, it was providing him with a copy of the closure note in his case.

## **Scope of the case**

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17. The complainant first contacted the Commissioner on 15 October 2019 to complain about the way his request for information had been handled.
18. The Commissioner’s investigation has focussed on whether, on the balance of probabilities, Ofcom holds the information the complainant is seeking.

## **Reasons for decision**

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19. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

information communicate to him or her if it is held and is not exempt information.

20. In its submission to the Commissioner, Ofcom confirmed that it does not hold the requested information. It said this is because of its decision that the broadcasting complaint did not warrant investigation under the Broadcasting Code. In such cases, a formal assessment following an investigation was not carried out. Ofcom said that, for completeness, it had carried out a search of its case management system, where the broadcasting complaint was logged and where an internal note of the complaint's closure (the 'closure note') was recorded. Ofcom subsequently provided the complainant with a copy of this closure note.
21. In conversations with the Commissioner, the complainant has argued that Ofcom must hold a template or set of criteria against which it assessed his complaint about the BBC and concluded that the complaint would not be progressed. Alternatively, the complainant considers that his complaint about the BBC had been discussed in a meeting, which generated notes or minutes. It is recorded information such as this that the complainant is seeking.
22. The complainant has argued that a reference to his BBC complaint in the Ofcom Bulletin evidences that Ofcom holds the type of information he is seeking ie that it must have assessed or discussed his complaint and generated recorded information about that assessment or discussion.
23. The complainant has also told the Commissioner that, in a telephone conversation with Ofcom, Ofcom told him that there had been a meeting at which his BBC complaint was discussed. As such, the complainant considers Ofcom should hold related minutes or notes.
24. First, the Bulletin. On page 37 of issue number 379 of Ofcom's *Broadcast and On Demand Bulletin* dated 28 May 2019 there is a table headed 'Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.' In this table there is a reference to one complaint about the 'Sports Personality of the Year' programme having been assessed. Presumably, this is the broadcasting complaint the complainant's submitted to Ofcom.
25. The Commissioner does not consider that this reference in the Bulletin is evidence that Ofcom holds information that the complainant is seeking. It simply records that Ofcom assessed his complaint and Ofcom has explained the process by which it was assessed, above. The assessment did not involve the use of a template, set of criteria or a meeting.

26. Ofcom has confirmed in a further discussion with the Commissioner about the current FOIA complaint, that the complainant's broadcasting complaint was assessed by an Ofcom officer:
- viewing the programme in question
  - reviewing the correspondence from the BBC to the complainant; and
  - assessing the complaint against Rule 2.13 of the Broadcasting Code, using their own experience and knowledge.
27. After approaching the team that had handled the complainant's broadcasting complaint, Ofcom told the Commissioner that, in addition and as is usual, the officer's decision not to progress the complaint was triaged up to their manager. The manager, again using their own experience and knowledge, and the Broadcasting Code, agreed with the officer's decision. Details of the complaint were then entered into Ofcom's case management system which generated the closure note, a copy of which the complainant has received.
28. Second, the matter of any meeting at which the complainant's broadcasting complaint was discussed. The complainant says that Ofcom told him in a conversation that such a meeting had occurred. In her correspondence to the complainant of 19 August 2019, Ofcom's Corporation Secretary summarises the various telephone calls the complainant had with individuals in Ofcom's Consumer Contact team. The complainant's broadcasting complaint and his service complaint were discussed in these conversations. There is no reference, however, to the complainant having been advised in one of these conversations that there had been a meeting at which the broadcasting complaint was discussed and assessed.
29. As is common in an office setting, the officer who assessed the broadcasting complaint may (or may not) have informally discussed the complaint with their manager, but there was no formal meeting and no notes of any discussion or assessment were recorded.
30. Ofcom has confirmed to the Commissioner that no meetings at which the complainant's broadcasting complaint was discussed took place and the Commissioner can see no reason to doubt that that is the case.

### *Conclusion*

31. In the Commissioner's view, the process by which the complainant's broadcasting complaint was considered, as described by Ofcom, is entirely credible. She notes that Ofcom has discussed the complainant's FOIA complaint with the relevant team and undertaken appropriate

searches for any information that would fall within the scope of the complainant's request. Ofcom has not identified any information and, on the balance of probabilities, the Commissioner is satisfied that Ofcom does not hold any relevant information and has complied with section 1(1)(a) of the FOIA.

## Right of appeal

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32. 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: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## Signed

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**