

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 March 2024

**Public Authority:** Channel 4  
**Address:** 124 Horseferry Road  
London  
SW1P 2TX

#### Decision (including any steps ordered)

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1. In a seven-part request, the complainant has requested information from Channel 4 about complaints about bullying submitted through its 'Speak Up' facility. Channel 4 considers two parts of the request aren't valid requests under FOIA. It has refused the remaining five parts under section 40(2) and 40(5) of FOIA - personal information, section 41 - information provided in confidence and section 36(3) of FOIA - prejudice to the effective conduct of public affairs.
2. The Commissioner's decision is as follows:
  - Parts 3 and 4 of the request aren't valid requests under section 8 of FOIA.
  - Channel 4 correctly applied section 36(3) to the remaining five parts of the complainant's request. It's entitled to neither confirm nor deny it holds information that's relevant to these parts as to do so would be likely to prejudice the effective conduct of public affairs.
3. It's not necessary for Channel 4 to take any corrective steps.

## Background and context

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4. On 27 September 2021, the complainant had submitted a request to Channel 4 for information associated with Channel 4's 'Speak Up' facility. Speak Up<sup>1</sup> is a confidential process through which people working at Producers and other third parties can escalate concerns to senior Channel 4 management.
5. The Commissioner considered Channel 4's handling of this request under reference IC-136681-Z7Z2<sup>2</sup>. In his decision dated 7 September 2022 the Commissioner found that Channel 4 was entitled to refuse the request under sections 40(2), 40(5A) and 41 of FOIA.

## Request and response

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6. On 11 July 2022, the complainant wrote to Channel 4 and requested information in the following terms:

"Under the Freedom of Information Act, could you please therefore disclose the following information:

- [1] Did Speak Up partially uphold a complaint against [redacted] in June 2021 on the basis they had not conducted an investigation into claims of bullying?
- [2] Did Speak Up conclude that [redacted] had failed to properly investigate the same bullying complaint in both March 2020 and March 2021, as stated by Speak Up Evaluation Member, [redacted]?
- [3] Does failure to properly investigate a bullying complaint properly constitute a breach of Channel 4's Supplier Code of Conduct?
- [4] Has [redacted] to date properly investigated the bullying complaint in question?

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<sup>1</sup> <https://www.channel4.com/corporate/about-4/speak-facility-suppliers>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021695/ic-136681-z7z2.pdf>

- [5] Has [redacted] submitted a report to Channel 4 from this investigation? If so, when?
  - [6] Have any complaints ever been made to Alex Mahon [CEO of Channel 4] about [redacted] potentially covering up wrongdoing or victimising someone that reported bullying?
  - [7] If so, what action did Alex Mahon, and Channel 4 take to investigate such complaints?"
7. Channel 4 responded on 8 August 2022 and advised that, as it had stated in a previous response dated 25 October 2021 to an earlier request, the complainant had exhausted Channel 4's request handling and section 14(1) of FOIA applied. This exemption concerns vexatious requests.
  8. Following an internal review dated 12 August 2022, Channel 4 upheld its original position.
  9. A complaint was then brought to the Commissioner who found, on 23 July 2023, that Channel 4 wasn't entitled to rely on section 14(1) of FOIA and that it must issue a new response<sup>3</sup>.
  10. Following the Commissioner's decision, Channel 4 provided the complainant with a new response on 16 August 2023, advising the following:

"As previously advised in responses to previous requests, including in Channel 4's responses to request reference: [request dealt with under IC-136681-Z7Z2], we consider details reflecting any specific complaint made via Speak Up to be exempt from disclosure pursuant to section 41 of the Act (information provided in confidence). Having regard to the assurances of confidentiality Channel 4 make to individuals engaging with Speak Up, Channel 4 is mindful of the impact disclosure would have on future Speak Up processes. We consider that there is no overriding public interest defence to the disclosure of such information.

As previously advised in Channel 4's response to request referenced [redacted], where confirmation that information is held in relation to a specific Speak Up complaint would entail the disclosure of personal information, we consider section 40(5)(a) of the Act (personal information) to apply. To the extent that confirming whether Channel 4

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<sup>3</sup> [ic-233113-l7y2.pdf \(ico.org.uk\)](https://www.ico.org.uk/for-organisations/information-access-to-information/foia/foia-exemptions/foia-exemption-14-1)

holds certain information relevant to the FOI request would entail the disclosure of personal data, we neither confirm nor deny holding it.

As previously advised, we consider that section 40(2) (personal information) applies to the extent that your request is for the personal data of third parties.

In addition to the exemptions relied upon above, we can confirm that; in the opinion of the qualified person, section 36(3) of the Act (prejudice to the effective conduct of public affairs) applies. The qualified person considers that we can neither confirm nor deny holding certain information requested given in doing so, we would be prejudicing the effective conduct of public affairs.

In applying section 36 of the Act we are required to consider the public interest test to assess whether the public interest favours maintaining the exemption...

Finally, in relation to the following parts of your request:

“- Does failure to properly investigate a bullying complaint properly constitute a breach of Channel 4’s Supplier Code of Conduct?

- Has [redacted] to date properly investigated the bullying complaint in question?”

Given responding to these questions would require an evaluation or opinion, we consider these to fall outside the scope of the Act, this is because the Act applies to information held by public authorities in recorded form and does not require a public authority or its employees to set out their views or opinions on any matter.”

11. Following an internal review Channel 4 wrote to the complainant on 14 September 2023. Channel 4 advised that it had previously set out a detailed response on its reliance on section 40 and section 41 of FOIA, and so its internal review was focusing on its reliance on section 36(3) of FOIA. Channel 4 confirmed its reliance on the exemptions it had cited.

## Scope of the case

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12. The complainant contacted the Commissioner on 27 September 2023 to complain about the way their request for information had been handled.
13. In addition to being dissatisfied with the exemptions on which Channel 4 is relying, the complainant said that a request forming part of the Commissioner’s previous decision notice hadn’t been identified. They

asked the Commissioner to consider the following request in the current case, as follows:

"On March 22nd, 2021, a complaint was made to Speak Up about Channel 4 supplier [redacted], in relation to a show they produce called [redacted].

There seems to be some confusion at Channel 4 as to the outcome of this investigation, and I would like some clarification - under the Freedom of Information Act - as to whether this complaint was counted as 'partially upheld', or 'not upheld' under the statistics provided to Deadline under the FOIA."

14. In correspondence to the Commissioner on 26 February 2024, Channel 4 advised that the First-tier Tribunal (Information Rights) was going to consider the above request as part of the complainant's appeal of the Commissioner's decision in IC-136681-Z7Z2. For information, Channel 4 explained that Speak Up complainants are provided with the outcome of their complaints and that, more generally, were Channel 4 to hold details of any complaints about a specific programme, these would be held for the purposes of editorial decision-making and therefore fall outside the scope of FOIA pursuant to the creative output derogation.
15. In its submission to the Commissioner, Channel 4 has cross-referenced the parts of this request with the complainant's request in IC-136681-Z7Z2. It has confirmed the following:
  - The information requested in part 1, part 2, part 5 of the request was considered under IC-136681-Z7Z2. Channel 4 has also now applied section 36(3) to these parts and also sections 40(2), 40(5) and 41.
  - Regarding parts 6 and 7, Channel 4 has applied sections 36(3) 40(2), 40(5) and 41 to these parts.
  - Channel 4 doesn't consider that parts 3 and 4 are valid requests under FOIA.
16. The Commissioner will first consider whether parts 3 and 4 of the request are valid requests under section 8 of FOIA. However, the focus of his investigation is to determine if Channel 4 is entitled to rely on the exemptions it's cited in respect of the request, including parts 3 and 4 if necessary. He will focus on section 36(3) initially.

## Reasons for decision

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### Section 8 – request for information

17. Channel 4 considers parts 3 and 4 of the request aren't valid requests under FOIA.
18. Section 8(1) of FOIA states that a valid request is one that is in writing, includes the applicant's name and contact details and describes the information requested.
19. In part 3 the complainant has asked whether failure to "properly" investigate a bullying complaint constitutes a breach of Channel 4's Supplier Code of Conduct? The Commissioner doesn't consider this to be a valid request under section 8 of FOIA for the following reasons: it reads as a question to which Channel 4 is being invited to answer "Yes" or "No"; the question is predicated on a view the complainant appears to have; and the question rests on what a "proper" investigation is. The Commissioner also notes that Channel 4's Supplier Code of Conduct<sup>4</sup> is published and so the complainant can review that Code for themselves.
20. In part 4 the complainant has asked whether a particular organisation has "properly" investigated a bullying complaint. Again, the Commissioner doesn't consider this to be a valid request under section 8 of FOIA for the following reasons: it reads as a question to which Channel 4 is being invited to answer "Yes" or "No" and the question again rests on what a "proper" investigation is. More fundamentally, to answer the question, Channel 4 would need to create new information to answer the question; it would have to determine what a "proper" investigation was, assess whether an investigation had been "properly" investigated and then record its findings. FOIA doesn't require a public authority to create new information in order to respond to a request.
21. As Channel 4 has noted, FOIA doesn't require a public authority to give opinions or explanations or to answer general queries. FOIA concerns solely recorded information an authority holds at the time of a request.
22. Only an applicant knows what recorded information it is that they're seeking when they submit a request under FOIA. The Commissioner has published guidance for applicants on making a request to ensure they

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<sup>4</sup> <https://www.channel4.com/corporate/about-4/operating-responsibly/suppliers/channel-4-supplier-policies-and-standards>

receive the specific information they're seeking<sup>5</sup>. One of his tips is to "try to make it as easy as possible for the public authority to understand what you want to receive."

23. Since parts 3 and 4 of the request aren't valid requests under FOIA, these two parts aren't considered in the analysis below.

### **Section 36 – prejudice to the effective conduct of public affairs**

24. The Commissioner will consider Channel 4's application of section 36(3) of FOIA to parts 1, 2, 5, 6, and 7 of the request.
25. Section 1(1) of FOIA places a duty on a public authority to confirm whether it holds information an applicant has requested; this is known as 'the duty to confirm or deny'.
26. Section 36(3) of FOIA removes the duty to confirm or deny information is held if, in the reasonable opinion of a qualified person, to do so would or would be likely to have any of the effects under section 36(2).
27. Section 36(2)(b)(i) of FOIA says that information is exempt information if, in the reasonable opinion of a qualified person (QP), disclosing the requested information would inhibit, or would be likely to inhibit, the free and frank provision of advice.
28. Section 36(2)(b)(ii) says that information is exempt information if, in the reasonable opinion of a QP, disclosure would inhibit, or would be likely to inhibit, the free and frank exchange of views.
29. Section 36(2)(c) says that information is exempt information if, in the reasonable opinion of a QP, disclosure would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.
30. Channel 4's position is that confirming whether it holds the requested information would or would be likely to cause the inhibition/prejudice envisioned under all three exemptions under section 36(2).
31. To determine, first, whether Channel 4 correctly applied section 36(3) to the five parts of the request, the Commissioner must consider the QP's opinion as well as the reasoning that informed the opinion.

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<sup>5</sup> <https://ico.org.uk/for-the-public/official-information/>

32. Channel 4 has advised that its QP is Martin Baker, its Chief Commercial Affairs Officer.
33. Channel 4 has provided the Commissioner with evidence that Martin Baker gave his opinion on 17 August 2023. The Commissioner is satisfied that, under section 36(5) Martin Baker is an appropriate QP and that he gave his opinion at an appropriate time ie prior to Channel 4 issuing its internal review response.
34. The Commissioner has considered whether the opinion about section 36(3) is reasonable. It's important to note that 'reasonableness' isn't determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it's a reasonable opinion, and not necessarily the most reasonable opinion.
35. The test of reasonableness isn't meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, he must find that the exemption is engaged.
36. For the QP's opinion to be reasonable, it must be clear as to precisely how the envisioned inhibition/prejudice may arise. In his published guidance on section 36 the Commissioner notes that it's in the public authority's interests to provide him with all the evidence and arguments that led to the opinion, to show that it was reasonable. If this isn't done, then there's a greater risk that the Commissioner may find that the opinion isn't reasonable.
37. Channel 4 has explained that the QP was kept very well informed about the relevant background to the request and interactions with the complainant over the last few years and is therefore very well acquainted with the matters discussed in the request and the broader context of the request. Channel 4 provided further detail which the Commissioner hasn't reproduced in this notice.
38. Channel 4 provided the Commissioner with a copy of its submission to the QP. The QP was provided with a copy of the request and arguments as to why confirming or denying whether the information was held would or would be likely to cause the prejudice under section 36(2).
39. The QP was advised why confirming or denying whether Channel 4 held the information would be likely to cause the effect under section 36(2)(b)(i) and 36(2)(b)(ii). This was because confirming or denying whether information is held would indicate whether a bullying complaint had been made about a particular organisation. The QP was given advice about these two exemptions which the Commissioner hasn't included in



this notice. But the substance of this advice was that confirming or denying information was held would inhibit people from raising concerns through the Speak Up facility (the Commissioner considers that effect is more appropriate to section 36(2)(c)) and from sharing advice and views about concerns freely and frankly. This would make operating Speak Up very difficult.

40. The QP was also advised why confirming or denying whether Channel 4 held the information would be likely to cause the effect under section 36(2)(c). Again, this was because confirming or denying whether information is held would indicate whether a bullying complaint had been made about a particular organisation. It would prohibit a third-party organisation from engaging and cooperating with Speak Up in the future. Potential media attention as a result of confirming or denying whether information is held would also be likely to distract Channel 4 and a third-party organisation from their ability to carry out business as usual. Finally, the QP was advised that confirming or denying could prejudice an ongoing appeal to the First-tier Tribunal associated with a previous request.
41. The QP made their decision on the basis that the envisioned inhibition/prejudice would be likely to happen rather than would happen. The Commissioner will accept this lower level of likelihood.
42. Having considered the circumstances and the QP's submission – which contains more detail than is included in this notice – the Commissioner is satisfied that the QP had sufficient appropriate information about the request and the three section 36(2) exemptions to form an opinion on whether relying on section 36(3) to refuse to confirm or deny Channel 4 held relevant information was appropriate.
43. Since he's satisfied that the relevant considerations have been addressed, he must accept that the QP's opinion about neither confirming nor denying information is held is one a reasonable person might hold. He therefore finds that Channel 4 is entitled to rely on section 36(3) to neither confirm nor deny it holds information relevant to the request.
44. The Commissioner will go on to consider the public interest test associated with the section 36(3) exemption.

### **Public interest test**

45. Channel 4 has acknowledged the public interest in understanding how complaints of bullying and wrongdoing are handled. More broadly, it says it's always mindful of the generic public interest in transparency and accountability of publicly owned bodies' decision-making processes.

Channel 4 is mindful of high-profile accusations of wrongdoing in the broadcasting industry that have been the subject of a great deal of public attention and debate.

46. The complainant didn't put forward any public interest arguments in their request for an internal review.
47. In their complaint to the Commissioner the complainant said the public interest favoured confirming or denying relevant information is held because since they first submitted this request numerous stories of allegations of serious wrongdoing have been in the news. The Department of Culture, Media and Sport Select Committee has made inquiries of all major broadcasters regarding how they handle complaints and its chair made public statements about the importance of the proper operation of whistleblowing facilities.
48. The complainant goes on to discuss concerns that "senior people" have raised about the whistleblowing facilities of Channel 4 and other broadcasters. They also discuss a particular matter that has specific interest to them.
49. Channel 4 considered that the public interest in confirming or denying the information is held was significantly lessened for the following reasons:
  - If held, any information on the outcome/actions taken in relation to both a Speak Up complaint and a complaint to Alex Mahon would be specific to the facts and circumstances of the specific complaint. They couldn't be extrapolated to apply to other scenarios.
  - If held, any information about a complaint about a particular supplier wouldn't be indicative of any wider issue with that supplier.
  - Channel 4 provided additional public interest arguments for neither confirming nor denying which the Commissioner doesn't intend to reproduce in this notice. This is to avoid causing the inhibition/prejudice Channel 4 is seeking to prevent through its reliance on section 36(3).
50. However, Channel 4 considered that there was very limited public interest in confirming or denying whether information was held in a context that would imply a third-party organisation had issues with bullying or had been investigated for wrongdoing, or both. Channel 4 considered therefore, that the balance of the public interest weighed in favour of maintaining the exemption.

## **The Commissioner's conclusion**

51. The Commissioner has noted the complainant's arguments. He's aware of high-profile allegations of misconduct against media figures and has taken account of the complainant's reference to investigations into Channel 4 suppliers that have potentially failed to deal with allegations of misconduct properly. However, he nonetheless considers that the matters that are the focus of this request, while of interest to the complainant, have limited wider public interest. He considers it's sufficient for the public to know that Channel 4 has a Supplier Code of Conduct and a Speak Up<sup>6</sup> facility.
52. The Commissioner's satisfied that there's greater public interest in the above Speak Up facility operating fairly and effectively. This necessitates individuals and third-party organisations being confident that matters dealt with through Speak Up will be handled confidentially and individuals and organisations being prepared to engage and cooperate fully with this facility and any associated investigations. To a lesser degree, the Commissioner also accepts that the degree of wider public interest in the subject of the request doesn't outweigh the interest in Channel 4 and third-party organisations being able to focus on their business as usual without outside distraction - from media interest, for example. Cumulatively however, the Commissioner is satisfied that the balance of the public interest favours neither confirming nor denying the information is held in this case.
53. The Commissioner has decided that Channel 4 is entitled to rely on section 36(3) of FOIA to neither confirm nor deny it holds the requested information and that the public interest favours maintaining this exemption. As such, it's not necessary to consider Channel 4's application of section 40(2), 40(5A) or 41(1) to the request.

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<sup>6</sup> <https://www.channel4.com/corporate/about-4/speak-facility-suppliers>

## **Right of appeal**

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54. 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](mailto:grc@justice.gov.uk)

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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
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**Wycliffe House**  
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