

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 July 2012

**Public Authority:** Office of Communications  
**Address:** Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

#### Decision (including any steps ordered)

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1. The complainant requested all information held by the Office of Communications ('Ofcom') that relates to the change in responsibility for investigating transmission complaints after the duty was taken over by the BBC as a consequence of the termination of a contract between the corporation and the regulator.
2. The Commissioner has identified a number of procedural shortcomings in the way that Ofcom handled the complainant's request. The Commissioner's decision is that Ofcom breached section 1(1), 10(1) and 17(1) of the FOIA.
3. The Commissioner requires no remedial steps to be taken in this case.

#### Request and response

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4. On 28 February 2011, the complainant wrote to Ofcom and requested information in the following terms:

*"On Wednesday 30 June 2010, the handling of reporting and primary investigation passed from Ofcom to the BBC. This new arrangement is described by here: -*

*<http://stakeholders.ofcom.org.uk/enforcement/interference-complaints/>*

*To understand this change, the planned and predicted: -*

*- benefits*

- *cost savings*
- *efficiencies*
- *processes*

*I formally request sight of all documents the Ofcom produced, received and now holds relating to this process revision and change of responsibilities, specifically :-*

- a) All documents sent from Ofcom to third parties.*
- b) All documents received by Ofcom from third parties.*
- c) All documents produced for Ofcom.*
- d) All minutes produced from related meetings.*
- e) Documents defining the criteria for and procedure of case escalation from the BBC to Ofcom.*
- f) Details of any regulatory duties that have been delegated by Ofcom to the BBC, for each duty, please also provide a link to or include the documentation defining associated legislation."*

5. Ofcom responded on 29 March 2012. In relation to the request at items (a) to (e) it released:

- An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, dated July 2006
- Heads of Agreement, dated 28 June 2010

With regards to item (f) Ofcom stated that no regulatory duties had been relinquished to the BBC. Ofcom acknowledged that it held the BBC letter terminating their agreement regarding the provision of the Radio Investigation Service. However, it stated that it required BBC consent to release this document.

- 6. On 11 April 2011 the complainant asked Ofcom to undertake an internal review.
- 7. On 20 June 2011 Ofcom wrote to the complainant asking him to clarify which part(s) of the initial response he wished to be reviewed.
- 8. On the same day the complainant provided the clarification requested by Ofcom in the following terms:

*"Could you please confirm that:-*

*i) for parts 'a' and 'b' of the request that no emails, letters or any documents were exchanged with anyone (not even the BBC) in arranging this transfer and establishing the process and agreements?*

*ii) for part 'd' of my request that there were no meetings attended by representatives of Ofcom in this matter; and thus there are no minutes?"*

9. On 22 July 2011 Ofcom responded with the results of the internal review. It stated that no further information, other than that now disclosed to the complainant, was held.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. During the course of the investigation Ofcom conducted a fresh search for information that fell within the scope of his request. Further information was found and this was eventually disclosed to the complainant. As a result of this further disclosure the complainant confirmed he was now satisfied with the extent of information provided to him but still required a decision notice in order for the Commissioner to highlight any procedural breaches of FOIA by Ofcom.
12. The Commissioner's investigation will consider whether Ofcom breached section 1(1), 10(1) and 17(1) of the FOIA.

### **Reasons for decision**

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13. The request was made on 28 February 2011 and Ofcom responded on 29 March 2011. In failing to provide the information within 20 working days of the request, Ofcom breached section 10(1) of the Act.
14. It follows then that in failing to issue a valid refusal notice within the time for complying with section 1(1), Ofcom breached section 17(1).
15. Ofcom stated in its response on 29 March 2011 that it also held the BBC letter terminating their agreement with the regulator for provision of the Radio Investigation Service on 1 April 2010, dated 16 June 2008. Ofcom refused to disclose this information, stating:  
  
*"We are unable to disclose this document without the consent of the BBC. We have written to the BBC but have yet to receive their consent. Should they consent we will get back to you with this information."*
16. Ofcom failed to specify an exemption for this refusal or provide any clarification as to why consent was required, thereby breaching section 17(1)(b) and (c).

17. During the course of the Commissioner's investigation Ofcom conducted another search for information and found a substantial amount of information. In failing to confirm that this information was held earlier and in failing to communicate this information to the complainant, Ofcom breached section 1(1)(a) and (b) of the FOIA.
18. The FOIA makes reference to complaints procedures at section 45 (concerning the Code of Practice) and at section 50; both relate to circumstances where an applicant wishes to complain about the response of a public authority to a request for information. The Information Commissioner's Good Practice Guidance states that in no case should the total time taken for an internal review exceed 40 working days.<sup>1</sup>

*"In such cases we would expect a public authority to be able to demonstrate that it had commenced the review procedure promptly following receipt of the request for review and had actively worked on the review throughout that period."*

19. On 11 April 2011 the complainant asked Ofcom to undertake an internal review. The public authority did not seek clarification until 20 June 2011. The internal review was not completed by the public authority until 22 July 2011 - taking 69 working days. Whilst this is not a statutory breach of the FOIA, the Commissioner is disappointed that the internal review on this occasion took so long to complete and resulted in information, that in actual fact was held, still to be located during the course of the Commissioner's investigation.

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<sup>1</sup> See

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/foi\\_good\\_practice\\_guidance\\_5.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf)

## Right of appeal

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20. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

21. 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.
22. 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, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**