

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2013

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant has requested information about BBC editorial control and definitions of words used by editorial staff or in programmes. The BBC explained the information was covered by the derogation and excluded from the FOIA.
2. The Commissioner’s decision is that this information is held by the BBC genuinely for the purposes of ‘journalism, art or literature’ and does not fall under the FOIA. He therefore upholds the BBC’s position and requires no steps to be taken.

Request and response

3. On 10 July 2013 the complainant made the following request to the BBC:

“General information about BBC editorial control

1. A short description of BBC editorial control, with:

- a. Number of staff involved in editorial control, job titles, and their department affiliations*

- b. Terms or reference (or specifications of their roles and responsibilities, whatever form these things take at the BBC) for these staff*
- c. Copy of editorial guidelines that each of these staff are required to follow*
- d. Distinction of "Editor", "Editorial Advisor" and "Editorial Strategy Advisor", "Senior Strategy Editorial Advisor" or whatever other job titles are used in editorial control*
- e. Qualifications required to obtain a position in each of the roles identified in reply to (d)*
 - i. Academic qualifications level*
 - ii. Experience qualifications*
- f. Typical salary ranges for each role identified in reply to (d)*

Definitions of terms used by editorial staff or in programmes

- 2. A definition of each of the following terms used at the BBC, within editorial guidelines, or in correspondence, news reports etc:*
 - a. The word "discrimination" ie. what would technically constitute discrimination in a programme, series of programmes, or news bulletins, etc*
 - b. The word "bias" or if you wish "unbiased" or the phrase "lack of bias"*
 - c. What is meant by the word "extreme" views? Eg what would constitute an "extreme viewpoint"?*
 - d. The expression (with respect to politics) "centre-left", "centre-right", "far-right" and "far-left"*
 - e. I have heard the expression "far-right" many times on BBC reports but cannot recall use of the expression "far-left": why is "far-right" used but "far-left" not used?*

The complainant asked that if some information related to the BBC and some to the BBC Trust, the response should advise if there is equivalent information in both organisations.

4. The BBC responded on 7 August 2013. It stated that the information requested is excluded from the FOIA because it is held for the purposes of 'journalism, art or literature.' It explained that Part VI of Schedule 1 of the FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the FOIA if it is held for 'purposes other than those of journalism, art or literature'.
5. The BBC argued that it was not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities. It therefore would not address the specific questions included in the request for information.
6. However the BBC did provide the complainant with an explanation (outside of the FOIA) concerning staff involved in editorial control. It also sent him a link to its editorial guidelines.
7. With respect to the BBC Trust, the BBC explained that this has no role in day-to-day editorial decisions. It explained that within the BBC Trust there are five trustees who sit on the Editorial Standards Committee. It named the Committee members and sent the complainant a link where further details could be found. It also explained that this Committee is supported by an Editorial Team within the Trust Unit. It gave details of the four main functions of the Editorial Team and listed the job titles and roles of its eleven members. Finally, the BBC explained the role of independent Editorial Advisers who work on a freelance basis to investigate editorial appeals and advise the Trust.

Scope of the case

8. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. In particular, he challenged the operation of the derogation.

Reasons for decision

9. Schedule One, Part VI of the FOIA provides that the BBC is a public authority for the purposes of the FOIA but only has to deal with requests for information in some circumstances. The entry relating to the BBC states that the BBC is a public authority:

"...in respect of information held for purposes other than those of journalism, art or literature."

10. This means that the BBC has no obligation to comply with Part I to V of the FOIA where information is held for 'purposes of journalism, art or literature'. The Commissioner refers to this as 'the derogation'.
11. The House of Lords in *Sugar v BBC* [2009] UKHL 9 confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the information is caught by the derogation.
12. The scope of the derogation has been considered by the Court of Appeal in the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715. The leading judgment was made by Lord Neuberger of Abbotsbury MR who stated that:

" once it is established that the information sought is held by the BBC for the purposes of journalism, it is effectively exempt from production under FOIA, even if the information is also held by the BBC for other purposes." (paragraph 44), and that

"....provided there is a genuine journalistic purpose for which the information is held, it should not be subject to FOIA" (paragraph 46).

13. The Commissioner considers that it follows from this that if the information is genuinely held for any of the three derogated purposes – ie. journalism, art or literature - it is not subject to the FOIA. His role is to consider whether the information was genuinely held for the derogated purposes or not.
14. With regard to establishing the purpose for which the information was held, Lord Neuberger of Abbotsbury MR (at paragraph 55) drew a distinction between information which had an effect on the purposes of journalism, art or literature and information that was in fact being held for one of those purposes. Based on this judgment the Commissioner considers that for information to be held for a derogated purpose it is not sufficient for the information to simply have an impact on the BBC's journalistic, artistic or literary output. The BBC must be using the information in order to create that output, in performing one of the activities covered by journalism, art or literature.
15. The Court of Appeal adopted the Information Tribunal's definition of journalism which set out that journalism comprises three elements.
 - "1. *The first is the collecting or gathering, writing and verifying of materials for publication.*

2. *The second is editorial. This involves the exercise of judgement on issues such as:*
 - *the selection, prioritisation and timing of matters for broadcast or publication;*
 - *the analysis of, and review of individual programmes; and*
 - *the provision of context and background to such programmes.*
3. *The third element is the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and development of individual journalists, the mentoring of less experienced journalists by more experienced colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making."*
16. The information that has been requested in this case is information about BBC editorial control and definitions of words used by editorial staff or in programmes.
17. In light of submissions made by the BBC in previous cases and mentioned in the refusal notice the Commissioner considers that the requested information falls under the second element of journalism within the definition above (the editorial process). The requested information is integral to the editorial process of reviewing and planning for future programmes and therefore directly affects the creative output of the BBC.
18. In considering whether information is held genuinely for the purposes of journalism, the Commissioner has considered the following three factors with respect the requested information:
 - the purpose for which the information was created;
 - the relationship between the information and the programmes' content which covers all types of output that the BBC produces; and
 - the users of the information.
19. When considering the purposes for which the information was created, it is clear that information about editorial control and how it is organised at the BBC directly relates to its output. The requested job descriptions specifying departments, roles and responsibilities will reflect the editorial work of these individuals in producing output and is therefore inextricably linked to that output.

20. In addition, the qualifications and experience of the BBC's editorial staff is directly linked to the BBC's output. This will also have an effect upon the maintenance and enhancement of the standards and quality of journalism and as such also falls into the third definition of journalism as given above.
21. The Commissioner has accepted on a number of occasions (such as in case reference **FS50314106**) that the BBC has a fixed resource in the Licence Fee and resource allocation goes right to the heart of creative decision making. The Commissioner therefore considers that the amount the BBC spends on salaries for its editorial staff is derogated.
22. The definition of terms used by the BBC (within its editorial guidelines) is also clearly linked to programme content and the users of such information will be BBC staff and editors.
23. Overall, the Commissioner is satisfied that the BBC genuinely holds the information for the purposes of journalism. He is content that the information is held for editorial purposes and therefore considers that the requested information falls within the derogation.
24. For all the reasons above, the Commissioner is satisfied that the requested information is held for the purposes of journalism and is derogated. Therefore, the BBC was not obliged to comply with Parts I to V of the FOIA.

Right of appeal

25. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF