

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

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 requested information on the agreement with the European Union on funding. The BBC confirmed that they did not hold the information. The complainant considered that more information must be held. The Commissioner's decision is that the BBC does not hold any further information in this case. The Commissioner does not require the BBC to take any steps.

Request and response

2. On 16 August 2017 the complainant requested the following information:
'Will you please accept this letter as my formal request under the above Act to be provided with full details of the agreement entered into by the BBC with the European Union under the terms of which agreement the European Union has provided funding to the BBC.'
3. On 20 September 2017 the BBC responded that *'the BBC does not receive any EU money by routine'*. The BBC went on to describe the limited circumstances where the BBC does receive some funding from EU sources (e.g. for research or from EU grants through UK regional bodies to stimulate TV production outside London, especially drama.) The BBC explained that *'BBC News programmes are not permitted to accept any external funding at all'*.

4. The BBC applied section 12 to refuse to provide the total quantity of such funding.
5. The complainant requested an internal review on 23 September 2017. He argued that he had asked for full details of the EU agreement and not the amount of funding recently received from the EU as it *'does not satisfy my request to understand the terms of the agreement that the BBC entered into with the EU and whether such terms included any undertakings entered into by the BBC'*.
6. The BBC sent him the outcome of its internal review on 13 October 2017. The BBC explained at some length that the BBC does not have a general funding agreement or understanding with the EU. It confirmed that *'the BBC does not have a single, generic agreement for funding with the EU...The BBC does not, therefore hold the requested information'*. It therefore did not review the application of section 12 to grant funding arrangements for specific programmes.
7. The BBC went on to consider its duty to provide advice and assistance under section 16 of FOIA and provided a significant amount of information about funding arrangements and the importance of the BBC's Editorial Guidelines in considering any receipt of funding: *'the BBC protects its impartiality by not permitting any external funding for news programming, which includes European Union grants.'*

Scope of the case

8. On 29 November 2017 the complainant wrote to the Commissioner that his interest *'is whether the terms that the BBC have entered into with the EU oblige the BBC from refraining from criticism or adverse comment regarding the EU. As the BBC is the nation's public broadcasting organisation, I suggest that it is a significant point of public interest to understand if the BBC's remit in reporting and analysing news regarding the EU is now subject to contractual constraints.'*
9. The Commissioner has considered that the scope of the case is whether section 1 of FOIA was applied correctly by the BBC.

Reasons for decision

10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The BBC confirmed to the Commissioner that it maintains its decision that it has satisfied its duties under section 1 of the FOIA as the information requested (*full details of the agreement entered into by the BBC with the European Union*) is not held by the BBC.
14. As is the practice in a case such as this, the Commissioner asked the BBC a number of questions to confirm/establish if further information is held.
15. In response to the Commissioner's questions about the location of the information, the BBC stated that it had liaised with the relevant division of the BBC, the BBC's Policy team. The BBC's Policy team are responsible for holding knowledge about EU policy and regulation relevant to the BBC, including on the subject of grants or other funding. *'Given this remit, this is the appropriate team for confirming whether such an agreement exists and therefore determining whether a search was required to locate the requested information, and whether any information relevant to the request was deleted.'* It did not hold any recorded information falling within the scope of the request.
16. The BBC referred the Commissioner to the internal review: *'the applicant asked specifically for information about the terms of the agreement that the BBC entered into with the EU and whether such terms included any undertakings entered into by the BBC'. This internal review confirms that the BBC does not have a single, generic agreement for funding with the EU. The BBC explained to the applicant that 'the BBC does not receive any EU money by routine'. The BBC does not, therefore, hold the requested information.'*
17. The BBC explained that the BBC was unable to respond to the Commissioner's questions to establish what searches had been carried out as *'no agreement exists currently, has existed in the past, or is being negotiated, no search could be conducted nor was any relevant information deleted or in any other way destroyed.'*

18. Having considered the specific wording of the request for '*full details of the agreement entered into by the BBC with the European Union*' and the BBC's responses to the complainant and the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any recorded information within the scope of the request.
19. The Commissioner accepts that the BBC has fulfilled its obligation under section 16 to assist the complainant by providing additional information on the ways that specific BBC non-news programmes or projects may, in ad hoc ways, receive EU funding.
20. As the Commissioner's decision is that the information is not held, the Commissioner does not require the BBC to take any steps.

Right of appeal

21. 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@hmcts.gsi.gov.uk

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

22. 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.
23. 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