

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2011

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 all communications in the Director General's personal email account sent to certain individuals over a specified period of time.
2. The BBC explained that it considered that some qualified exemptions may apply to this information, but it needed more time to consider where the balance of public interest lies. However, it did not provide the result of those deliberations up to the date of this Notice.
3. The Commissioner finds that the BBC breached section 10(1) and 17(3)(b) of FOIA because it was unreasonable in the all the circumstances to not issue a complete response under the FOIA.
4. The Commissioner requires the BBC to comply with the obligations imposed on it by section 1(1) of the Act within 35 calendar days:
 - It must confirm or deny in writing which iteration of the request that it considers able to answer within the costs limit.
 - To comply with section 1(1)(b), it should either provide the information or issue a notice, which complies with section 17 of the Act, indicating the exemptions that it is relying on. If it is relying on a prejudice and public interest based exemption, it must indicate why the exemption is engaged (that there would, or would likely to be prejudice to a purpose outlined in the FOIA) and its conclusion about where the balance of public interest lies. If it is now relying on the derogation, it should explain clearly why it considers that the requested information is held for one or more of the derogated purposes.

(If the public authority holds recorded information and considers that the balance of public interest favours disclosing the information or no longer considers the exemption to apply, the information should be provided to the complainant)

5. The BBC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. The complainant wrote to the BBC on 13 June 2011. He originally asked for *'all emails sent by the BBC Director-General Mark Thompson in 2010.'*

7. The BBC responded on 8 July 2011 and explained that the request covered too much information and it was applying the costs limit – section 12(1). It invited the complainant to make a modified request that was narrower.

8. The complainant made a modified request on the same day:

'Could I please narrow my request so that it only concerns Mr Thompson's personal email account, and need only include emails sent to and from the other BBC executive directors, as well as emails to and from either of Jeremy Hunt MP and Jonathan Stephens from the Department for Culture Media and Sport.'

If this is still not within the FOI limits, I'd be happy to narrow the time frame to May 2010 to the end of that year. If this is again not within the limits, it could be just for May-July 2010.'

9. The BBC replied on 5 August 2011. It said that it needed to extend the deadline to consider the public interest test. It explained that it considered that the exemptions found in section 40(2) [personal information], section 43(2) [prejudice to commercial interests] and 36 [prejudice to the effective conduct of public affairs] were engaged. It was therefore extending the time limit by virtue of section 17(3).
10. After a further email from the complainant, the BBC issued a second response on 8 August 2011. It stated that the request covered a very large number of emails. It explained that it considered that sections 36 [prejudice to the effective conduct of public affairs] may apply and needed to now consider where the balance of public interest lay in relation to each individual email. It explained that it hoped to make a partial disclosure within 40 working days.

11. No further substantive response was received up to the date of this notice.

Scope of the case

12. The complainant contacted the Commissioner to complain that the BBC had failed to issue an appropriate response to the request dated 8 July 2011.
13. After further correspondence with the complainant, the Commissioner agreed to issue a formal decision notice about this matter. He also telephoned the BBC to ensure that a response had not been issued and was told that it had not as of 19 December 2011.

Reasons for decision

Section 10(1)

14. Section 10(1) requires the BBC to comply with section 1 of the Act within 20 working days of receipt of the request.
15. Section 1(1)(b) of the Act requires a public authority to communicate the information that it holds, subject to exemptions applying in the Act. The BBC has neither communicated the recorded information it holds or appropriately relied on any exemption and it has been over four months since the date of the request. This is a breach of section 10(1).

Section 17(3)(b)

16. Section 17(3) does allow the public authority to provide its public interest determination in a separate notice 'within such time that is reasonable in the circumstances'.
17. The Commissioner has issued publicly available Good Practice guidance on this point. This can be found at:
http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf.
18. This states the following:

*"...our view is that public authorities should aim to respond fully to **all** requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but, in our view, in no case should the **total** time exceed 40 working days."*

19. In this case the Commissioner notes that the time taken by the public authority was over four months, well in excess of the recommended maximum of forty days. The Commissioner considers this to be an unreasonable timescale.
20. The Commissioner therefore finds that the BBC has breached section 17(3)(b) because it has not provided the complainant with its public interest determination within a reasonable time. As stated in the Commissioner's guidelines, he considers 40 working days to be the maximum time for carrying out a public interest determination.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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
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Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**