

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 March 2016

**Public Authority:** British Broadcasting Corporation  
**Address:** Broadcasting House  
Portland Place  
London  
W1A 1AA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the cost to the BBC of providing its staff at Media City UK in Salford Quays with free teas and coffee, together with the details of the drinks consumed. The BBC initially refused the request under section 43 – commercial interests, but at the internal stage it refused to provide the majority of the information under section 12 on the basis that complying with the request would exceed the cost limit for dealing with such requests. It did however provide some information on the brands of the beverages.
2. The Commissioner's decision is that the BBC is entitled to refuse the request under section 12. However, to date, the BBC has not provided the complainant with the advice and assistance required to enable him to make a fresh request which could be dealt with within the appropriate limit. This constitutes a breach of section 16.
3. The Commissioner requires the public authority provide the complainant with appropriate advice and assistance.

#### **Request and response**

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4. On 2 January 2015 the complainant requested information of the following description:  

"I understand BBC staff are provided with free tea and coffee at the corporation's offices at Media City UK in Salford Quays. Please provide

me with the cost of providing this tea and coffee for each of the last two years. Either calendar or financial years are acceptable. Please also provide me with a list of the brand names for the teas and coffees concerned, and the quantity of tea and coffee concerned. Please also provide the quantity of milk provided and the cost of the milk.”

5. On 29 January 2015 the BBC responded. It confirmed it held the requested information but refused to provide it under section 43 on the basis that its disclosure would prejudice its own commercial interests and those of a named contractor.
6. Following an internal review the BBC wrote to the complainant on 24 August 2015. It revised its position. The BBC now provided the complainant with a list of the brand names he had requested. However it continued to withhold information on the cost and quantities of the beverages and milk supplied. The BBC maintained that it been correct to refuse these elements of the request under section 43 on the basis that disclosure would prejudice its own commercial interests. It explained that at the time of its initial response it had been wrong to try and rely on section 43 to protect the commercial interests of the contractor supplying the drinks as it had not consulted with that contractor on this issue. However when conducting the internal review, the BBC did consult with the contractor and was now satisfied that section 43 could be used to protect the contractor's interests as well as its own.
7. In addition to applying section 43 the BBC also informed the complainant that it would take around three to four days to locate and retrieve all the information on the costs and quantities of beverages consumed. Therefore, the BBC argued, the cost of complying with the request would exceed the appropriate limit of £450 established under section 12.
8. During the course of the Commissioner's investigation the BBC withdrew its application of section 43.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 23 September 2015 to complain about the way his request for information had been handled. His main concern was the BBC's grounds for refusing the request which he understood to be section 43 – commercial interests.
10. He also expressed disappointment in the way the internal review process was initiated. Following the BBC's refusal of his request he contacted the BBC to ask whether he should submit his request for an internal review via email or through the post. The BBC took this enquiry to be the

request for an internal review which it then proceeded to carry out. The complainant considered this denied him the opportunity to set out his grounds for challenging the BBC's application of section 43.

11. The Commissioner considers that the matter to be decided is whether the BBC is entitled to refuse to comply with the outstanding elements of the request under section 12 on the basis that the cost of doing so would exceed the appropriate limit. The outstanding elements of the request are the cost and quantity of the tea, coffee and milk provided by the BBC to its staff in Media City.
12. The Commissioner will comment on the internal review process under 'Other matters'.

### **Reasons for decision**

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13. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of doing so would exceed the appropriate limit.
14. The appropriate limit is a cost limit set out in regulations introduced under the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the 'Fees Regulations' set the appropriate limit for public authorities such as the BBC, at £450. Very often the costs of dealing with a request relate to staff time. The Fees Regulations set the cost that can be charged for staff time at £25 per hour. They also specify the activities that a public authority can take into account when estimating whether the appropriate limit would be exceeded. Under regulation 4(3) these activities are restricted to the time taken in determining whether the information is held, locating that information, retrieving that information or a document containing the information and extracting the information from such a document.
15. Therefore if it would cost the BBC more than £450, which at £25 per hours equates to 18 hours, to identify, locate and retrieve the requested information, the BBC would be entitled to refuse the request under section 12.
16. It is understood that the BBC contracts out its catering services and that there is one contract which covers the entire BBC, not just Media City in Salford. In order to answer the request the BBC would need to examine the information it is provided with under that contract, such as monthly reports and order forms, to determine what information it holds and then extract any relevant details on the costs and quantities of tea, coffee and milk consumed.

17. During the two year period covered by the request there was a change in the company running the catering contract. Following a tendering process a new company was awarded the contract. The new contract commenced in April 2014. Prior to April 2014 the original contractor provided the BBC with a monthly breakdown of the services supplied which simply listed an item for 'Salford Hospitality'. It did not provide any more detailed breakdown of the costs or quantities involved. Therefore the BBC never held the information it would need in order to extract the figures that have been requested in respect to the period before April 2014. Furthermore, since it now has no contract with that company the BBC is unable to obtain the necessary figures.
18. As a consequence the BBC would only ever be able to provide the complainant with a partial response to his request. However if the BBC holds information relevant to the request in respect of the new contract, it would still be required to communicate that information to the complainant, subject, of course, to the application of the appropriate limit and any exemptions. The BBC has provided a detailed explanation of the information it holds in relation to the new contract and what would be involved in extracting the figures from that information in order to answer the request.
19. The new contract includes not just the provision of free teas and coffees for its staff but also more general catering services, running cafeterias and the provision of vending machines.
20. Under the contract free drinks are provided to staff in two ways. Firstly, throughout its offices there are a number of kitchens stocked with tea, coffee and milk which the staff can use. Secondly, catering can be ordered for particular events such as meetings or a staff forum.
21. Under the new contract the BBC is provided with a spreadsheet every month listing the services provided in respect of both the regular replenishment of the kitchens and the catering ordered for events. The events are not limited to those only attended by BBC staff; they can include meetings with external visitors and hospitality provided for BBC shows.
22. The BBC has provided the Commissioner with a copy of a spreadsheet for October 2014. From its contents the Commissioner understands it to relate solely to Media City in Salford and not to other BBC sites. The spreadsheet contains 278 entries. Each one relating to a separate activity such as the replenishment of one of the kitchens, or the provision of catering for an event. Although this information is far more detailed than that received under the previous contract, it still does not contain the figures that have been requested. In respect of the replenishment of kitchens the spreadsheet identifies when each kitchen

was restocked, the overall cost, lists the types of products provided and identifies the kitchen re-stocked. In respect of listing the products supplied a typical entry might read 'T/C/Milk/Sugar/Disposables'. The term 'Disposables' relates to ancillary items such as plastic spoons. The list does not state what quantities of tea and coffee etc were provided. Nor does it break the cost down to show the amount relating to each item re-stocked.

23. The Commissioner considers it likely that the contractor would hold the more detailed information necessary to provide the complainant with a full response. If so, it is certainly arguable that this information would be held by the contractor on behalf of the BBC in that the figures might have to be produced should the BBC ever wish to challenge the services provided under the contract. However this is not the only barrier to complying with the request and even if the BBC was provided with the more detailed information there would still be some work required to extract the relevant data and produce the figures requested. Therefore the Commissioner has not pursued this point.
24. The BBC has explained that from November 2014 the level of detail included in the monthly spreadsheet changed in respect of the re-stocking of the kitchens. The BBC now receives a breakdown of the individual products consumed in the kitchens each month. It is therefore possible to identify and extract the requested information in respect of the free teas and coffee being available in the kitchens for November and December 2014. The BBC has acknowledged that this information could be collated within the appropriate limit. The BBC estimates it would take 30 minutes to produce the figures for November and December. However it is important to recognise that this is only one component of the information captured by the request. The BBC would be entitled to refuse the request if it would exceed the appropriate limit to locate and extract any of the components it holds which are required in order to calculate the overall figures for the quantities and cost of tea, coffee and milk consumed.
25. Having looked at the information held in respect of the replenishment of the kitchens it is now necessary to consider what information the BBC holds on the catering for events, including, for example, meetings of BBC staff and staff forums.
26. The BBC provides tea and coffee for staff in specific circumstances, for example where meetings are over a specified duration, or when entertaining a person or organisation from outside the BBC. The catering for such events is ordered individually and appears on the monthly spreadsheet as individual items. A typical entry from the October 2014 spreadsheet might show that on a specific date tea, coffee, biscuits and water were provided for a given number of people, together with the

overall cost. The spreadsheet does not provide a breakdown of the cost for the individual products supplied for these events. Although the level of detail provided on the re-stocking of the kitchens increased from November 2014, there was no change in the way catering for events was reported.

27. However the BBC could use the booking forms submitted for each event to track down the necessary information. The BBC has provided a detailed estimate of the time involved in extracting this information from those forms. The BBC estimates that there would be around 1,145 booking forms and associated correspondence for the nine month period April to the end of December 2014. The term 'related correspondence' is understood to include confirmation of, or later changes to, the arrangements. The booking forms are held as hard copies in chronological order.
28. The BBC has argued that it would first have to request a copy of the booking forms from the contractor. The contractor would have to photocopy the forms before sending them to the BBC. This would take two hours.
29. Having obtained copies of the booking forms the BBC claims it would then need to go through each one to determine whether it included an order for teas, coffee or milk. If it did, the BBC would need to record the quantity of each product ordered. The BBC has explained that in practice this may not be straight forward and it may be necessary to consult any related correspondence for clarification. The BBC estimates that it would take an average of half a minute to examine each booking form. Therefore according to the BBC it would take around 9 hours 30 minutes to produce a list of the products ordered (1,145 booking forms @ half a minute per form = 572 minutes = 9 hours 30 minutes).
30. Having compiled a list of the products and quantities ordered for each event, it would then be necessary to investigate whether these beverages were provided for BBC staff or whether, for example they included hospitality for external visitors. The BBC considers that the only practical way to do this is to contact the organiser of the meeting and cross check the details from the booking form with the organisers' records of the who the attendees were. This would be a laborious process. The BBC estimates that for each event to would take 3 minutes to contact the organiser and then 5 minutes for them to consult their records of the meeting. The time involved be 152 hours (1145 events x 8 minutes = 9160 minutes = 152 hours).
31. The BBC would then need to proportion the beverages ordered for each event to the number of BBC staff in attendance and then aggregate those figures to produce a total for the quantity of each product



consumed. Although this sounds straight forward, the process is complicated because of the range of teas, coffees and milk that are offered. For example the milk can be provided in a variety of sizes and types, presumably skimmed and semi skimmed etc. The BBC estimates that this process would take 2 hours. The Commissioner accepts this and considers it to be a very conservative estimate.

32. Having produced a list detailing the quantity of each product ordered it becomes possible to calculate the overall cost. The BBC has explained that the costs of the individual products are not included on the booking form and therefore it would need to cross check against other records to determine what the BBC actually paid. It claims this would take a further 2 hours.
33. In summary, the BBC estimates that it would take a total of 167 hours 30 minutes, or £4,187 (photo copy booking forms = 2 hours, analyse booking forms = 9 hours 30 minutes, identify the quantity of drinks attributable to BBC staff = 152 hours, tally up the total quantity of drinks consumed by staff = 2 hours, cost up those quantities = 2 hours).
34. The Commissioner has considered this estimate critically. In respect of the number of events the Commissioner considers this estimate of 1,145 to be reasonable, and probably a conservative one. This is on the basis that the October 2014 spreadsheet includes around 200 events (200 per month x 9 = 1800 booking forms). However the Commissioner has gone on to consider whether it would be possible to reduce the number of those events that it would actually be necessary to look at. This is explained in more detail in paragraph 39
35. The Commissioner has disregarded the two hours it would take the contractor to photocopy the booking forms. This is because under regulation 4(3) of the Fees Regulations, a public authority can only take account of the costs that it expects to incur in dealing with the request and, from its submission, there is no indication this cost would be passed on to the BBC.
36. In respect of the time it would take to consult with the organiser of the events, the Commissioner considers some organisers would have been responsible for more than one meeting, reducing the overall number of organisers that needed to be contacted. However even if the time taken to contact staff was disregarded completely, the time it would take for the organiser to consult their records in order to establish who the attendees at each event were, would still give a total time in excess of the appropriate limit, ie 1,145 events @ 5 minutes per event = 5725 minutes = 95 hours.

37. The Commissioner is satisfied that the estimate of the time required to then proportion the drinks ordered to the BBC staff present at the each event is a reasonable one.
38. However he is not satisfied it would in fact take two hours to then cost up those drinks. It seems unlikely to the Commissioner that the price charged for the different products would fluctuate to any great extent. Therefore it would surely be simple for the BBC to access records on the standard cost of the individual products and, even if there is a range of products (different brands of tea, coffee and decaffeinated coffee etc), to use that price information to produce a the total cost of beverages consumed at meetings or other events.
39. The Commissioner has also considered whether it would be possible to reduce how many of the booking forms it was necessary to look at. The BBC is only a public authority in respect of information it holds for purposes other than those of journalism, art or literature. This means that if, for example, teas and coffee were provided as part of the hospitality for a show, any information about the cost or quantity of those drinks would be held for the purposes of journalism. It would not therefore be held for the purposes of FOIA and therefore not captured by the request. The BBC estimates that it would be necessary to look at around 1,145 booking forms. The Commissioner has looked at the information contained in the monthly spreadsheet for October 2014. Among the events shown are ones which appear to relate to the catering for BBC shows and if the descriptions contained in the spreadsheet were reliable, it may be possible to disregard those events. The Commissioner undertook a very crude exercise to explore whether such an approach could bring the cost of compliance within the appropriate limit. However even after making the most extreme assumptions, the cost of compliance would still far exceed the appropriate limit. The Commissioner therefore decided it was not appropriate to pursue this matter with the BBC.
40. It should also be recognised that even if the time taken to calculate the quantity and cost of the free drinks provided to staff at these events could be reduced, this information only relates to a nine month period as opposed to the two year period requested. Added to this would be an estimated half hour for collating the costs and quantities for re-stocking the kitchens in November and December and the potential costs of extracting any more detailed information on re-stocking the kitchens for April to October 2014 which may be held by the contractor.
41. The Commissioner is therefore satisfied that complying with the request would exceed the appropriate limit of 18 hours, or £450 by some considerable margin.



## Section 16 advice and assistance

42. Section 16 states that a public authority should provide advice and assistance so far as it would be reasonable to expect the authority to do so, to a person who has made a request. A public authority will be deemed to have complied with this duty if it has provided advice and assistance in line with that set out in the code of practice on how public authorities are expected to discharge their functions under FOI. This code is produced under section 45 of FOIA.
43. Under paragraph 14 of the code of practice, where a request is refused on cost grounds the public authority should consider what, if any, information could be provided within the cost ceiling. There is also reference to advising the applicant to refine or reform their request.
44. The Commissioner interprets the code of practice to mean that in order to satisfy the duty to provide advice and assistance a public authority should:
  - either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requestor to make a refined request.
45. It should be noted that the duty to provide assistance and advice under section 16 is expressly qualified by the words “only in so far as it would be reasonable to expect the authority to do so.” Therefore it does not necessarily mean that a failure to meet the requirements of the code will inevitably lead to a breach of section 16 if it was not reasonable to provide advice and assistance. The BBC has explained that it did not provide any advice and assistance when initially applying the cost limit at the internal review stage because at that time it was still of the opinion that even if the cost of compliance was not a bar to disclosure, the information was exempt under section 43 – commercial interests. Even if this was a valid reason for not providing advice and assistance, the BBC withdrew its application of section 43 during the Commissioner’s investigation.
46. In conclusion the Commissioner finds that the BBC breached section 16 by failing to provide any advice and assistance and it is therefore required to provide advice and assistance in accordance with the bulleted points in paragraph 44 above. The Commissioner notes that the BBC has informed him that it does now intend to write to the

complainant and provide advice and assistance. He welcomes this constructive approach.

## **Other matters**

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47. Although not forming part of the formal decision notice the Commissioner uses 'Other matters' to comment on issues raised by his investigation. The complainant has raised issues relating to the BBC's internal review process. In particular he was concerned that the BBC did not provide him with the opportunity to put forward his arguments against the BBC's application of section 43. The complainant contacted the BBC on 2 February 2015 to enquire whether his request for a review needed to be submitted by post, or whether an email would suffice. The BBC took this to be an actual request for a review and acknowledged it as such the following day on 3 February 2015. The Commissioner considers that this provided the complainant with adequate opportunity to submit any arguments he wished to make.
48. Unfortunately the BBC did not complete the review until 24 August 2015. Although there is no statutory time for carrying out a review, the Commissioner considers that most reviews should be concluded within twenty workings and only in exceptional circumstances should a review take longer than forty working days. On this occasion the time taken by the BBC far exceeds that period.

## Right of appeal

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49. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

50. 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.
51. 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** .....

**Robert Mehan**  
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**Information Commissioner's Office**  
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