

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 March 2017

**Public Authority:** British Broadcasting Corporation

**Address:** Room BC2 A4  
Broadcast Centre White City  
Wood Lane  
London  
W12 7TP

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to taxi expenses. The BBC provided the complainant with some information but said that some of the information was covered by the derogation and excluded from FOIA.
2. The Commissioner's decision is that this information was held by the BBC for the purposes of 'journalism, art or literature' and did not fall within the scope of FOIA. She therefore upholds the BBC's position and requires no remedial steps to be taken in this case.

#### Request and response

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3. On 16 February the complainant sent the following information request to the BBC:

(1) What was the total spent by BBC Scotland on taxi bills in 2013/14, 2014/15 and 2015/16, that should include all costs, including those associated with programme guests. And how much has been spent so far from April to the present?

(2) How much for all of the years and part year was spent for staff engaged in their course of business

(3) How much for all of the years and part year was for programme guests?

(4) How much of the total in (1) (2) and (3) was spent on bookings that were cancelled?

- (5) How much of the total in (1) (2) and (3) was spent on waiting time?
- (6) Can you split the bill up in (1) into the spend per department. For instance, how much news and current affairs spent, arts and documentary, comedy etc.
- (7) Does the costs of taxis in (1) (2) and (3) include those spent on individual expense accounts?
- (8) If not, can you tell me how much was repaid individuals who bought taxis on expense accounts for (1) (2) and (3).
4. On 7 March 2017 the BBC responded to the request. The BBC provided the complainant with some of the information requested but refused to provide taxi spend information where this was incurred by guest contributors to programmes whose input to which was integral to the overall production process. It explained that it did not believe that this information was caught by FOIA because it was held for the purposes of 'art, journalism or literature'.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 15 March 2017 to complain about the way his request for information had been handled.
6. The Commissioner considers the scope of the case is to determine whether the information relating to taxi spend incurred by guest contributors is excluded from FOIA because it would be held for the purposes of 'journalism, art or literature'.

### **Reasons for decision**

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7. Schedule One, Part VI of FOIA provides that the BBC is a public authority for the purposes of FOIA but only has to deal with requests for information in some circumstances. The entry relating to the BBC states:
- "The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature."
8. This means that the BBC has no obligation to comply with part I to V of the Act where information is held for 'purposes of journalism, art or literature'. The Commissioner calls this 'the derogation'.
9. The scope of the derogation was considered by the Court of Appeal in

the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715, and later, on appeal, by the Supreme Court (*Sugar (Deceased) v British Broadcasting Corporation* [2012] UKSC 4). The leading judgment in the Court of Appeal case 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)

10. The Supreme Court endorsed this approach and concluded that if the information is held for the purpose of journalism, art or literature, it is caught by the derogation even if that is not the predominant purpose for holding the information in question.
11. In order to establish whether the information is held for a derogated purpose, the Supreme Court indicated that there should be a sufficiently direct link between at least one of the purposes for which the BBC holds the information (ignoring any negligible purposes) and the fulfilment of one of the derogated purposes. This is the test that the Commissioner will apply.
12. If a sufficiently direct link is established between the purposes for which the BBC holds the information and any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to FOIA.
13. The Supreme Court said that the Information Tribunal's definition of journalism (in *Sugar v Information Commissioner* (EA/2005/0032, 29 August 2006)) as comprising three elements, continues to be Authoritative.

“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,

\* 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." However, the Supreme Court said this definition should be extended to include the act of broadcasting or publishing the relevant material. This extended definition should be adopted when applying the 'direct link test'.
14. The Supreme Court also explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.
  15. The information relates to taxi expenses incurred by guest contributors to programmes which is directly linked to output and therefore falls within the definition of journalism.
  16. The complainant has argued that because the BBC has provided him with other information directly related to programme production, for example taxi spend on the transport of tape/goods of a sensitive or urgent nature for the broadcast of programmes, that he does not understand the distinction between this and the taxi spend relating to guest speakers which the BBC has deemed to fall within the derogation.
  17. The Commissioner would not want to discourage the BBC from choosing to disclose information which may fall within the derogation if it is willing to do so outside of its statutory obligations under FOIA. The Commissioner can only make a determination in relation to the information which the BBC has confirmed that it does consider falls under the derogation. This is the taxi spend information relating to guest speakers and as explained above, having applied the approach to the derogation set out by the Supreme Court and the Court of Appeal, which is binding, the Commissioner is satisfied that this information falls under the definition of 'journalism, art or literature' and is therefore derogated. The derogation is engaged as soon as the information is held by the BBC to any extent for journalistic purposes.
  18. The Commissioner has therefore found that this information is held for the purposes of journalism and that the BBC was not obliged to comply with Parts I to V of FOIA.

## Right of appeal

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19. 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)

20. 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.
21. 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** .....

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**