

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2019

Public Authority: British Broadcasting Corporation (BBC)

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Senior Manager Review. The BBC refused to comply with the request under section 12 FOIA.
2. The Commissioner's decision is that the BBC was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request. The Commissioner also considers that the BBC provided the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 July 2018 the complainant requested information of the following description:

"1: Any documents held by the BBC related to the Senior Manager Review and the differences in salaries paid to Senior Managers in World Service Languages compared to those paid to Senior Managers elsewhere in BBC News or the wider BBC.

- 2: Any documents held by the BBC related to the Senior Manager Review and the differences in workload carried out by Senior Managers in World Service Languages compared to that carried out by Senior Managers elsewhere in BBC News or the wider BBC.”
5. On 14 September 2018 the BBC responded. It refused to comply with the request under section 12 FOIA as it said that it would exceed the cost limit to do so.
 6. The complainant requested an internal review on 19 September 2018. The BBC sent the outcome of its internal review on 29 October 2018. It upheld its original position.
 7. The BBC has since received two similar and related requests from the complainant which it is dealing with separately.

Scope of the case

8. The complainant contacted the Commissioner on 27 August 2018 to complain about the way the request for information had been handled.
9. The Commissioner has considered whether the BBC was correct to apply section 12 FOIA to the request in this case.

Background

10. In recent years unions and individual employees have raised numerous issues associated with pay discrepancies within pay structures, policies and conditions across the BBC. The BBC has been addressing the allocation of allowances across the BBC and seeking to standardise the pay and grading through a BBC wide review of Terms and Conditions for employees graded in Bands A – F; this review did not consider the pay of Senior Managers at the BBC, who fall outside the band structure. The aim of the review was to increase fairness and consistency. Through negotiations with unions and internal consultations, the new terms and conditions were accepted following a Ballot in June 2018 and subsequently implemented.

11. On 19 July 2018, the BBC outlined a series of proposals to reform its approach to pay and benefits for Senior Managers, following the conclusion of its Terms and Conditions review. The BBC then operated a consultation period on these proposals for Senior Managers, taking the opportunity to listen to feedback in individual and group consultation sessions and via email.
12. The consultation period concluded on 12 November 2018; this is after the date of the request. All Senior Managers received an update from the Group HR Director outlining changes which had been made to the original proposals and setting out final proposals. The BBC also published further information relating to key questions and concerns raised during consultation, as well as an updated version of the original proposal guide to enable Senior Managers to see the final set of changes in one place.

Reasons for decision

Section 12 – cost exceeds appropriate limit

13. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
14. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.

15. The appropriate limit for the BBC is £450 or the equivalent of 18 hours work.
16. The BBC has argued that the request is broad in that it requests any documents relating to the Senior Manager Review, as well as information relating to more specific elements; "the differences in salaries paid to Senior Managers across the BBC" and "the differences in workload carried out by Senior Managers across the BBC".
17. Given that the scope of the Senior Manager Review extended across the entire BBC, the request as drafted would necessarily include information held in all divisions of the BBC across a range of systems, including HR databases and email systems.
18. The BBC considers that an estimate of one working week is a realistic estimate based on the scope of the request and size of the BBC senior management workforce. The BBC considers this estimate to be sensible, realistic and supported by cogent evidence.
19. In the period since the BBC dealt with the request, the BBC has gone through the steps required to collate the information required to respond to the second element of question 1 of the request, i.e. information relating to "the differences in salaries paid to Senior Managers in World Service Languages compared to those paid to Senior Managers elsewhere in BBC News or the wider BBC".
20. It said that this exercise was carried out once the Senior Manager Review had concluded and the Senior Leader Pay Review for 2017 and 2018 commenced, and took a BBC employee one full working week to complete. For clarity, this took place after the BBC had responded to this request.
21. The BBC considers this exercise to provide a cogent and realistic estimate as it involves the same tasks as would have been necessary to respond to the request, albeit involving only a proportion of the information relevant to the full scope of the request.
22. It said that this exercise involved the following elements:

Locating the information

1. Mapping specific Senior Manager roles to generic BBC framework jobs. Finalising job titles, job descriptions and job pay ranges for senior roles.
1 day

Retrieving the information

2. Bringing together and combining individual pay data for the period from 31-Jul-2017 to 1-Aug-2018. This included Full Time basic salary, cash allowances e.g. legacy car allowance, acting allowance, legacy London Weighting Allowance, and indicative private medical insurance allowance. It also collected data relating to salary increases received outside of the annual pay review during the year. Pension scheme membership was also collected, to provide a total reward picture.

2 days

3. Applying pay eligibility rules for 2017 to pay data and then carrying out 2018 pay review.

½ day

4. Alignment of total payments to job pay range minimum, i.e. bringing total payment to any senior leader whose total cash was below the job pay range minimum up to that level. In some cases offsetting London Weighting Allowance or legacy car allowance was also required.

½ day

5. Calculating budgets based on 1% for 2017 and 3.5% for 2018 of eligible population and Full Time basic salary.

½ day

Extracting the information

6. Calculating current and proposed position in job pay range for each senior leader.

1 hour

7. Modelling of spend vs budget and breaking this down by division and sub-division e.g. News – Current Affairs, World Service etc.

2 hours

8. Reviewing data with relevant Divisional HR Directors to confirm accuracy.

1 hour

Total time 5 working days

23. The BBC confirmed that these tasks were carried in the context of a time sensitive review process and by BBC employees who had the best understanding of the information and data held by the BBC and how to locate, retrieve and extract the information.
24. The BBC reiterated that the tasks outlined at paragraph 22 above are only those necessary to respond to the second element of the first question of the request, i.e. information relating to "the differences in salaries paid to Senior Managers in World Service Languages compared to those paid to Senior Managers elsewhere in BBC News or the wider BBC".
25. The second element of the second question is for documents related to "differences in workload carried out by Senior Managers in World Service Languages compared to that carried out by Senior Managers elsewhere in BBC News or the wider BBC".
26. It said that there are 230 Senior Managers across all of the BBC's divisions. In order to collate the information necessary to respond to this element of the request, the following steps would have been necessary:
 - a. for all BBC departments to review all Senior Manager job and role descriptions and determine any references to workload or differences in workload; and
 - b. for these mentions of workload to be cross-referenced in order that any differences in workload could be determined.
27. In addition to this, the first element of both questions, "Any documents held by the BBC related to the Senior Manager Review", has a wide-ranging and broad scope which would have required further engagement from all divisions of the BBC to:
 - a. determine which documents they held which could be potentially relevant to the request, and
 - b. review these to determine whether they were actually relevant to the request.
28. Based upon the BBC's submissions, the Commissioner would agree that the request can be considered to be broad in nature. Furthermore the BBC has subsequent to receiving this FOIA request, undertaken work to locate, retrieve and extract the information falling within the scope of the second part of point 1 of the request. This actually took the BBC five full working days to complete and the BBC has confirmed that this work was undertaken in the most efficient way possible by the appropriate personnel with understanding of the information requested. Given that this work would still not cover the whole request, the Commissioner

does consider that it would exceed the cost limit under section 12 FOIA to comply with the request in this case.

Section 16 – Advice and Assistance

29. Under section 16 FOIA the BBC is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.
30. The BBC confirmed that it has provided the following advice and assistance to the complainant:

“To comply with the time-limit, you could consider narrowing your request; for example, to request a job description(s) a of particular senior manager role(s), as this will include the relevant responsibilities for each role. We also note that, as an employee at the BBC, you will be provided with information concerning the Senior Manager Review and you can discuss issues with your line manager too.”
31. The BBC said that it was therefore satisfied that it has provided the complainant with appropriate advice and assistance.
32. The Commissioner considers that the BBC has complied with its obligations under section 16 FOIA in this case.

Right of appeal

33. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

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SK9 5AF