

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

### **Decision notice**

**Date:** 18 August 2021

**Public Authority:** British Broadcasting Corporation (BBC)

**Address:** Broadcasting House

Portland Place

London

W1A 1AA

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

---

1. The complainant requested data, relating to iPlayer usage, in a machine-readable format. The BBC provided this data, but not in a machine-readable format.
2. The Commissioner's decision is that the BBC has failed to comply with its obligations under section 11 of the FOIA.
3. The Commissioner requires the BBC to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a copy of the requested information in a machine-readable format.
4. 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**

---

5. The complainant contacted the BBC via the [whatdotheyknow.com](http://whatdotheyknow.com) website on 23 January 2021 and requested information of the following description:

*"Following on from my FOI request (ref RFI20201463) can you please provide continuations of the tables for the period Aug 2020*

*to end Dec 2020.*

*- Monthly iPlayer Requests for TV Programmes by Live and Non Live Streams/Downloads*

*- Weekly iPlayer Requests for TV Programmes - 4 Screens (Computer, Mobile, Tablet, TV, Unknown)*

*"Please can you supply this in a machine readable format, preferably CSV/Excel."*

6. On 16 February 2021, the BBC responded. It provided the requested information, but provided it in PDF format.
7. The complainant sought an internal review on the same day. He pointed out that he had expressed a preference for the information to be provided in a machine-readable format and that the BBC had not given effect to that preference.
8. The BBC completed an internal review on 22 February 2021. It stated that it was entitled to communicate the information "by whatever means is most reasonable" and that, in this case, it was reasonable to provide the information in PDF format "to ensure the data is not edited."

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 26 February 2021 to complain about the way his request for information had been handled.
10. At the outset of her investigation, the Commissioner contacted the BBC on 27 July 2021. She pointed out that the BBC's stance appeared to be built on an incorrect reading of her guidance. She asked the BBC to either provide a copy of the information in machine-readable format or explain why it was not reasonably practicable to do so. The BBC responded on 11 August 2021. It maintained its stance.
11. The Commissioner considers that the scope of her investigation is to determine whether the BBC has complied with section 11 of the FOIA.

## **Reasons for decision**

---

12. Section 11 of the FOIA states that:

*(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—*

- (a) *the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
- (b) *the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
- (c) *the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*

*the public authority shall so far as reasonably practicable give effect to that preference.*

*(1A) Where—*

- (a) *an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and*
- (b) *on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form*

*the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.*

- (2) *In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.*
- (3) *Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.*
- (4) *Subject to subsections (1) and (1A), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.*
- (5) *In this Act "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection—*

- (a) *has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,*
  - (b) *is factual information which—*
    - (i) *is not the product of analysis or interpretation other than calculation, and*
    - (ii) *is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and*
  - (c) *remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.*
- 13. The Commissioner considers that the information in question formed part of a dataset as it is factual information, collected by the BBC in the performance of its duties and held in electronic form. The BBC did not, in its submission, address this point specifically, although it did refer to the Commissioner's guidance on datasets in its submission.
- 14. When considering a complaint about a failure to comply with a section 11 obligation, the Commissioner considers that there are two factors that must be considered. Firstly, the requestor must have expressed a preference for the information to be provided in a particular form. Secondly, the public authority must demonstrate that it was not reasonably practicable for it to have given effect to the preference that the requestor expressed.
- 15. The Court of Appeal in *Innes v Information Commissioner & Buckinghamshire County Council* [2014] EWCA Civ 1086, found that, in order to be valid, a preference for information to be provided in a particular form or format must be expressed at the point the request is made. Underhill LJ wrote in the judgement that he "saw no need to strive for a looser meaning" – although the Commissioner's guidance states that, where a preference is expressed at a later stage, the public authority can choose to treat such correspondence as a clarification of the original request, thus re-setting the 20 working days.
- 16. In this case, the complainant was absolutely clear when making his request. He wanted the information to be provided to him in a machine-readable format.

17. A machine-readable format is one in which data is structured in such a way that a computer can automatically read and process it. There are various machine-readable formats and the complainant specified, in his request, two of the most common: Excel spreadsheet (.XLS) and Comma Separated Values (.CSV). Portable Document Format (.PDF) is not a format capable of being read by a machine.<sup>1</sup>
18. The Commissioner is therefore satisfied that the complainant expressed a clear preference, at the point of making his request, for the information to be provided to him in an electronic format.

*Was it reasonably practicable to give effect to that preference?*

19. In its submission, the BBC argued that:

*"Information disclosed under freedom of information is disclosed to the 'world at large' and public authorities, particular those subject to significant public scrutiny and review such as the BBC, may reasonably assume that information disclosed to a single requestor will be circulated publicly. It follows that there is a reasonable concern that information provided may be manipulated or otherwise misused. The ICO will appreciate that the BBC's iPlayer system is subject to significant public scrutiny given the BBC's prominence in the broadcasting market, as well as the emergence of new and important issues such as mandatory sign-in for BBC users. Such matters place the BBC in a unique position which increases the risk that some actors may try to misuse statistics about the number of iPlayer viewers to suggest more, or even less, use of BBC services. This is not a criticism of the complainant, but a reflection on the level of scrutiny and risk of misuse of data faced by the BBC more generally...our sole concern is with the capacity for manipulation of raw data if provided in a machine-readable format.*

20. It went on to draw attention to the phrase "capable of re-use" in section 11(1A) of the FOIA added that:

*"The disclosure document provided by the BBC is only one page. It is not an extensive data set that would be difficult to re-create if desired by the complainant."*

---

<sup>1</sup> <https://opendatahandbook.org/glossary/en/terms/machine-readable/>

21. The Commissioner is not satisfied that the BBC has satisfactorily explained why it is not reasonably practicable for it to provide the information in a machine-readable format.
22. The explanatory notes to the Protection of Freedoms Act 2012 (which inserted section 11(1A) into the FOIA) make clear that:

*"A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation."*<sup>2</sup>
23. The Commissioner recognises that information disclosed under the FOIA is disclosed to the world at large. Once information has been disclosed, the public authority loses the ability (in most circumstances) to exert any further control over the information's further use.
24. Therefore, in considering the consequences of discharging its obligations under the FOIA, a public authority is entitled to consider the consequences of the information falling into the hands of an unscrupulous person who would wish to misuse the information. Whilst this is always the case in theory, the Commissioner notes that, in this particular case the request was submitted via [whatdotheyknow.com](http://whatdotheyknow.com) and therefore any disclosed information would be available, via that site, to anyone who looked for it. Therefore this is not just a purely hypothetical possibility.
25. That being said, the Commissioner does not consider that the BBC has provided a satisfactory explanation as to exactly what could be done with this information, why it would be likely to happen and why no counter-measures would be available to prevent it from happening.
26. All public authorities operate under some level of scrutiny from the smallest of parish councils to the largest of government departments. Whilst the BBC is unusual in that it faces scrutiny in both its roles as a public authority and its role as a commercial operator, this is not a unique situation. The possibility that disclosed data could be "spun" or mis-used is a generic argument that could apply to almost any piece of information held by any public authority. The BBC has not put forward any arguments to explain why this particular information would be vulnerable in a way that any other data it disclosed would not be.

---

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2012/9/notes/division/5/1/6/1>

27. Furthermore, the Commissioner notes that, if the BBC were to disclose the information in machine-readable format, the information – in its original format – would be preserved on the whatdotheyknow.com website. Even if the request were not made via whatdotheyknow.com, there would be nothing to stop that BBC publishing the data itself so that, if someone were tempted to misuse the statistics, the original dataset would be available for all to see.
28. In any case, the fact that the complainant could, as the BBC pointed out in its own submission, re-create the same database himself, seriously undermines any assertion that harm could arise from disclosure of the same information in a machine-readable format.
29. Furthermore, the Commissioner considers that “reasonably practicable” in this context does not relate to the use to which the information may subsequently be put.
30. Section 11 of the FOIA is titled “Means by which communication to be made.” When considering whether providing information in a particular format is “reasonably practicable,” a public authority should be looking at the *means* of the communication – not the consequences.
31. It is unlikely to be “reasonably practicable” to expect a public authority to convert large volumes of information that it holds in one form into another form – for example digitising large numbers of paper documents or printing out several lengthy reports held electronically. The fact that the conversion is not “reasonably practicable” is not affected by the use to which the requestor might put such documents but the practical difficulties that a public authority would face in compiling the information into a format ready to be communicated.
32. The stipulation in the FOIA is that a public authority can only duck its section 11 obligations if it is not “reasonably practicable” to comply with them in the circumstances – not if it considers that it is “*more* reasonably practicable” to provide the information in a different form.
33. The BBC has failed to put forward any reasoned arguments, either specific to this particular information or more generally, to suggest why it would have any practical difficulties in providing this information in a machine-readable format. The Commissioner is therefore satisfied that the BBC has failed to comply with its duty under section 11 of the FOIA.



## Right of appeal

---

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

35. 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.
36. 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 .....**

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