

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

### **Decision notice**

**Date:** 15 March 2022

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

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

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1. The complainant has asked the BBC to confirm if it has destroyed any documents relating to the Princess of Wales's Panorama interview in 1995, and where any documents have been destroyed, he has asked for information relating to their destruction.
2. The Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any information that falls within the scope of the request.
3. The Commissioner does not require the BBC to take any further steps as he is satisfied that this request has been dealt with in line with section 1(1) (General right of access to information held by public authorities) of the FOIA.

#### **Request and response**

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4. On 24 November 2020, the complainant wrote to the BBC and requested information in the following terms:

*"I would like to request the following information under the Freedom of Information Act and Environmental Information Regulations. I understand my request will take 20 working days to process but I would be grateful if you could acknowledge receipt via [redacted]."*

*1... Since 1 January 2018 has the BBC destroyed any documentation generated OR held by the BBC which relates to the Princess of Wales's 1995 Panorama interview. This information could include internal documents and communications about the broadcast, or it could include external correspondence with third parties about the broadcast. Some of the information may have been generated prior to the programme being broadcast in 1995. Some of it may have been generated in the immediate aftermath of the original broadcast or more recently. Some of the information may involve contact with Diana, princess of Wales, and her brother Earl Spencer. Some of the information may relate to enquiries conducted by the BBC in the immediate aftermath of the interview which investigated the issue of several 'fake' bank statements commissioned by [redacted] and the methods employed by [redacted] to secure the interview.*

*2... If the answer to the above is yes can you please provide a list of documents which have been destroyed. In the case of each single document which has been destroyed can you provide a description of the document, e.g., was it a memo, an email, a report, a letter. In the case of each document which has been destroyed can you state the date it was generated and the date it was destroyed and why it was destroyed. In the case of each single destroyed document can you please provide a brief outline of its contents. In the case of each destroyed piece of correspondence and communication can you identify the relevant author (s) and recipients. In the case of each destroyed piece of correspondence and communication can you please provide a brief outline of its contents.*

*3... If destroyed documentation continues to be held in another form can you please provide a copy of this destroyed documentation.*

*Please note that I have confined the request to a particular time frame. But I am interested in all documents about the 1995 Panorama interview which have subsequently been destroyed by the BBC. So if the BBC is aware of documents being destroyed outside this time period can you let me know. Can you let me know the relevant dates when the documents were destroyed, and I will submit another request for information?"*

5. On 15 December 2020, the BBC responded. It said that it had conducted searches and no information within the scope of the request had been destroyed since 2018.
6. On 17 March 2021, the BBC completed a review of the request and wrote to the complainant. It said that it had carried out fresh searches and had identified 4 files (that included documents relating to the

interview) that were created prior to 2018 but had not been retained. It provided the names of the files and said that they were subject to 'routine document management processes' (destroyed) by staff in the BBC Archives between 2004 – 2009, as they had no ongoing archival value or were duplicates, and that it holds no further information about the files.

## **Scope of the case**

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7. On 29 March 2021, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether, on the balance of probabilities, the requested information is held by the public authority.

## **Reasons for decision**

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9. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

10. The Commissioner has sought to determine whether, on the balance of probabilities, the public authority holds any further information which falls within the scope of the request. He will apply the civil test of 'the balance of probabilities' in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held by a public authority.
11. In deciding where the balance of probabilities lies in this case, the Commissioner will consider explanations provided by the public authority, together with searches it has carried out and any other information offered, which is relevant to his determination. He will also consider any comments made by the complainant.

*Complainant's view*

12. The complainant expressed dissatisfaction that the BBC failed to provide a list of the documents relating to the Panorama interview that have been destroyed. He said that the BBC must know what documents were destroyed, because how would it otherwise know that any documents were destroyed.
13. The complainant also said that in its original response, the BBC said that no information was held, however, it 'only changed this stance in light of my request for an internal review'. He said that he believes a pattern appears to be emerging about the way the BBC handles requests about the interview, because this is not the first time it has used the 'excuse' of 'different' or 'more thorough searches' for finding information during the internal review.
14. The complainant also referred to a previous request for information relating to the interview that he made to the BBC in 2014. The BBC initially disclosed 15 pages of information, and maintained its stance following the internal review and subsequent complaint to the Commissioner (FS50567020). He said that the BBC later conceded that the response was incorrect. The complainant believes that in light of a series of highly critical television documentaries broadcast in 2020, the BBC 'admitted' it held more documentation about the interview. It said that further information had been uncovered by different and more thorough searches.

*The BBC's position*

15. The BBC said that the scope of the request relates to historic material that, if held, would be archived, consistent with the BBC's archival and records management policies. Any information relevant to the request would therefore be held by BBC Archives, who is responsible for processing and managing centrally-held information that has been deposited in the archives, including records relating to the interview. It said that no other division within the BBC would retain information about paper files / files containing documents of a historic nature relevant to the scope of the request. This view was confirmed by a senior BBC Archivist.
16. The BBC said that BBC Archives manages an electronic database that catalogues paper files by two-tiers of records of classification. They are: the name of the file and an index of terms relevant to the content of the documents contained in each file ('index entry'). Index entry searches can identify information at a more granular level, e.g., individual documents within files.

17. The BBC liaised with BBC Archives and carried out a fresh 'targeted search' of its records by index using the terms: 'Diana', 'Princess of Wales' and 'Panorama interview'. It identified 4 file titles that were created before 2018 but had been destroyed. These files were paper-based historical folders, which, contained index entries (regarding documents that would have been contained within them) relating to the interview and were responsive to the search terms (mentioned above).
18. The BBC said it cannot confirm the content of any documents that may have been held within the file titles identified, because the files containing the documents were the subject of 'routine document management processes' (destroyed) by staff in the BBC Archives in the period 2004 – 2009, as they had no ongoing archival value or were duplicates of other records.
19. The BBC provided an example of the number of files that are not retained following 'routine document management processes', e.g., between 2017 – 2019, 12,500 were reviewed, of these 7,500 files were not retained, whilst 5,000 files were retained.
20. The BBC said that the appraisal process applies to hard copy files deposited into storage. BBC Archives retain such files for ten years (or longer if a longer retention period is stipulated in the Corporate Retention Schedule), at which time an appraisal is conducted consistent with the principles in the Records Management and appraisal policies by experienced BBC archivists.
21. The BBC also said that its Records Management Policy (last updated in November 2020) classifies document value (for appraisal and retention purposes) in three ways, these are: business / re-use value, legal value, and historical / research value. It explained that the policy was followed with respect to the files concerned, that the records were appraised and destroyed as they had exceeded their retention period and they had not met the selection criteria for permanent archival. The BBC Archives kept a record of what has been destroyed and why.
22. The BBC also said that its Corporate Retention Schedule is relevant to the nature of information in the request, e.g., it shows that information about scheduling about broadcast programmes should be retained for 3 years.
23. Following its searches, the BBC confirmed that given the age of the files / documents no electronic copies of the files are held relevant to the scope of the request. It also confirmed that there was no archival purpose, other business purpose, or statutory / regulatory reasons for retaining the files / documents identified.

24. In regard to the four files identified, the BBC said that the search terms used indicate that the index entries identified (documents contained within the files) related to the interview. The BBC provided the Commissioner with the information it holds about the destruction of the four files and confirmed that this is the extent of the information it holds about them. He notes that this includes the 'file title', 'index entry', 'date of documents', 'date destroyed', 'reasons for destruction' and 'other notes' (showing notes made by the archival appraiser on an ad hoc basis - if they would be deemed useful, e.g., general information about the files being placed in storage and their retention period).
25. The BBC also provided the complainant with the 'file title', 'date destroyed', and 'the reasons for destruction' of the files it identified that contained index entries relevant to the scope of the request.

*The Commissioner's decision*

26. The Commissioner recognises that the scope of the request includes the description, contents and copies (in any other format) of documents that may have been destroyed since 1 January 2018.
27. The Commissioner acknowledges that the scope of the request was limited to 'relevant dates', however if the destruction of documents occurred outside the timeframe specified, the complainant wished to be informed of the existence of these and upon receiving this information he would submit a further request for information to the BBC.
28. The Commissioner notes the reasons the BBC has provided for carrying out the searches it has for the requested information in the BBC Archives and the likelihood (on account of the fact that any information about documents destroyed before 2018 would be historic and its archival processes) they would retrieve any information within the scope of the request. He also notes the key words used and the likelihood that they would retrieve any information relevant to the scope of the request. Finally he notes that searches of index entries, which, are more 'granular', were conducted and that this coupled with the archival appraiser's notes appears to be the extent of the information held by the BBC about the files that were destroyed.
29. The Commissioner acknowledges that the searches conducted and the evidence provided by the BBC shows that the files identified contained index entries relating to the interview and therefore contained documents within scope of the request but were destroyed. He also notes that information about the destruction of files with index entries (containing documents) relevant to the scope of the request, has been provided (e.g., date of destruction) and that the BBC does not hold any



further information about the individual documents that were contained within the files.

30. The Commissioner has been made aware that in regard to the files titled 'PROGRAMMES A-Z' and 'News and Current Affairs – Worldwide', under 'Date Destroyed' the date of destruction of the files is provided. Under 'Reason for Destruction' reasons have been provided. The BBC also explained that they were deposited in storage in 1997 and 1999 for appraisal in 2002 and 2009 had a 7 year retention in line with the retention schedule. The BBC also confirmed that it no longer holds a copy of these files (they were 'destroyed in-line with routine document management processes'), or a list of or copies of the documents that would have been contained with the files.
31. In regard to the remaining two files, the first ('News & Current Affairs – General'), the Commissioner notes that under 'Date Destroyed' the archival appraiser recorded the date of destruction, and states that the file was 'too general' to appear on the retention schedule and was destroyed following appraisal due to having 'No archival value'. In regard to the second file ('Security - General'), the archival appraiser stated that the file was 'never deposited in storage', was too generic to appear on the retention schedule (but 'has a 3 year retention rule, which, would be correct for a general file like this') and was destroyed in the 'registry' and this is why no 'date of destruction' for the file/documents is recorded.
32. The Commissioner considers the archival appraiser's notes demonstrate that the files were retained and destroyed in accordance with the BBC's retention schedule and records management policy.
33. The Commissioner notes that the BBC has a record of the files that contained index entries relevant to the scope of the request, which, were destroyed, and it has record of the destruction of these files. Moreover, with the exception of the 'date of destruction' the other information the BBC holds about the 4 files that were identified, e.g., file title, date of documents, reason for destruction, other notes etc, is not in fact within the scope of the request but was nevertheless disclosed to the complainant.
34. The Commissioner also notes the complainant's comments about the BBC's handling of a previous request and further information being 'uncovered' following further searches. However, the BBC has carried out more thorough searches (than those initially conducted) and based on the information provided in this case and the reasons given above, he is satisfied that on the balance of probabilities, the BBC does not hold any further information within the scope of the request.

## Right of appeal

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35. 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)

36. 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.
37. 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**