

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

### **Decision notice**

**Date:** 20 February 2023

**Public Authority:** British Film Institute  
**Address:** 21 Stephen Street  
London  
W1T 1LN

### **Decision**

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1. The Commissioner's decision is that although the British Film Institute (BFI) may hold the 'building blocks' to derive the requested figure for the proportion of its archived film material not available for viewing, the costs associated with doing so would exceed the appropriate limit and so section 12(1) of FOIA is engaged. There has been no breach of section 16(1) which concerns advice and assistance.

### **Request and response**

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2. The complainant made the following information request to the BFI on 27 October 2022:  
  
"1. What proportion of the film material you hold in your archives is not available for viewing? For example, you hold a copy of "Heaven Is round the Corner", a 1943 film [later corrected by the complainant to 1944] made by British National Films (BFI identifier 32007). It is listed in your Collections database as "35mm Dupe Negative - Nitrate - Combined - 8984 Feet - Stock date: 1943 - - C-637202 and "Master - Restricted access to preserved film". The film has never been released on any home media, and has not been shown in the UK since the 1950s. Therefore, the only known copy of this film resides with the BFI, but it is not available to view by members of the public and researchers.

2. What plans do you have to make such preserved films available for viewing?"
3. On 29 November 2022 the BFI advised the complainant that they had nothing further to add to their response of 9 March 2022 to a request on a similar matter that the complainant had submitted in February 2022.
4. In its 9 March 2022 response the BFI had discussed how it manages its collection and how materials could be viewed.
5. The BFI's final position in its internal review of 5 January 2023 was that it does not hold, nor within the limits set under FOIA is able to calculate, the information the complainant has requested ie the proportion of unrestored materials the BFI holds in its National Archive. The BFI said that the cost involved in undertaking such an exercise would be prohibitive and "... therefore is an acceptable exemption set out by the FOIA."

## **Reasons for decision**

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6. This reasoning covers whether the BFI holds the information the complainant has requested and whether section 12 of FOIA applies.
7. Under section 1(1) of FOIA a public authority must confirm whether or not it holds information an applicant has requested. If it is held and is not exempt information, the authority must communicate the information to the applicant.
8. However, under section 12(1) of FOIA a public authority such as the BFI can refuse to comply with section 1(1) if the cost of complying would exceed the appropriate limit of £450 (18 hours work at £25 per hour). Section 16(1) obliges a public authority relying on section 12 to offer an applicant advice and assistance to refine their request if it is possible to do so.
9. In their complaint to the Commissioner, the complainant said that they had subsequently worked out that, according to a BFI Collections Search they had carried out, the BFI has 87,920 films in its collection (on film, rather than digital or video formats - the complainant said the total for that is 105,379). The complainant said that if they then search amongst those for 'Viewing copy held', the resulting figure is 36,558 (46,642 if film, video, and digital formats together are included).
10. This suggested to the complainant that 51,362 (58.4%) of the films in the BFI's collection do not have a viewing copy held. They said that they

had worked out the statistics using the search facilities at that BFI Collections Search database. The complainant questioned why the BFI had been "so evasive" in not providing this information in response to their request. They said it took them a short amount of time to calculate the figures from the BFI's own website.

11. The Commissioner put the complainant's point to the BFI.
12. In its submission to the Commissioner, the BFI confirmed that it is unable to fully respond to the complainant's request about the proportion of unrestored materials it holds in its National Archive. This is on the grounds that the BFI does not currently hold the information and to undertake the work to enable it to answer the question would be outside of the time limits set under FOIA. The BFI gave the following explanation.
13. In many cases the BFI National Archive holds many different materials for a single film – in the terminology it uses, this is described as a single 'Work' with many 'Items'.
14. Those Items can range across a very broad set of types, formats and sources – such as original camera negative, release print, print created from a restoration, DVD copy created from a restoration, digital file from digitisation of physical materials, and many others. The BFI said it is important to note, too, that certain film Items are inherently unviewable either because of their fundamental characteristics (eg sound negative film reels have no images on them) or collections' care needs prevent the film from being accessible. For example, it had noted in its earlier correspondence [to the complainant] that films on hazardous nitrate stock pose care and health and safety challenges for several collections that means the elements are not available for access by the public.
15. The Collections Search query the complainant has described was run at the level of Film and TV Work, filtering for those where Items [materials] are held in the BFI National Archive collection. The result obtained from that Collections Search query is accurate, with caveats – set out below – but it does not answer the complainant's question from November 2022; namely, 'What proportion of the film material you hold in your archives is not available for viewing?'
16. The BFI said that the search the complainant ran answered a question about the Film Works, which is different from their original FOI request in which the question they asked was about the film materials. They are, the BFI says, fundamentally different questions.
17. A concrete example of this is that a film Work may have one VHS Item from an off-air recording, with Viewing status; and 20 or 30 film Items from various acquisitions and restorations, none of which have Viewing status. So the question 'what proportion of the film material you hold' is

very different from the question the complainant ran in the BFI's Collections Search: 'what proportion of film works you hold'.

18. As noted above, there is a substantial caveat about using the Collections Search to attempt a simple answer to the complex question the complainant presented. The Collections Search results are accurate for the fully catalogued films in the BFI National Archive collection (within the Collections Information Database).
19. However, as with many 'collecting' organisations there is always active work on the collections in its care. There are substantial numbers of film holdings in the BFI National Archive's film vaults that are in various stages of the accession and cataloguing process, with complex and costly work required to achieve the documentation in the database that would include them in the Collections Search results.
20. Because of this substantial quantity of film materials not fully catalogued, the results in Collections Search, though accurate for the accessioned and documented collections, is not an exhaustive report on the percentage of the film collections that are available to view. The cost of achieving that documentation is very high – multiple years of salaried inspection and cataloguing activity, costing tens of thousands of pounds.
21. So while the Collections Search result is a good statistic for the documented film collections, for the BFI to fully respond to the original request, it would have to undertake an extensive audit of its National Archive. This would take a considerable amount of time and would be at a cost which takes the request above the thresholds under FOIA, hence the BFI's original response where it outlined some of the complexities involved.
22. Finally, the BFI confirmed that it is open to meeting the complainant so it can help them refine their request so that the BFI can respond within FOIA's terms.
23. The complainant has requested the proportion of the BFI's film "material" that it holds in its archive that is not available for viewing. First, by their reference to film "material" the BFI interpreted the complainant to mean film "Items". Given that the BFI had explained its collection and some of the relevant terminology in its response to the complainant's earlier request, the Commissioner considers this was a reasonable interpretation.
24. The Commissioner understands that the BFI's collection, and what it comprises, is not as straightforward as the complainant thinks. The Collections Search the complainant carried out only retrieved a result relating to film 'Works' ie fully catalogued films; but their request to the BFI concerned film 'materials'. The BFI has explained that one film 'Work' may have many different 'materials' or 'Items' associated with it.

The BFI has given the following as example 'Items' for one film 'Work': the original camera negative, release print, print created from a restoration, DVD copy created from a restoration, digital file from digitisation of physical materials. The Commissioner understands that some of these Items may be viewable but some may not.

25. Potentially, the BFI holds the 'building blocks' that it would enable it to derive the figure that the complainant is seeking – the proportion of Items associated with each Work that are not available for viewing. However, the BFI has confirmed that the cost associated with doing that work would exceed the limit set out under section 12 and it has explained why that is the case. A substantial quantity of film materials is not fully catalogued; the cost of documenting and cataloguing the entirety of the BFI's collection including whether each Item associated with a film Work is viewable would be "very high", the BFI says, necessitating "...multiple years of salaried inspection and cataloguing activity, costing tens of thousands of pounds."
26. The Commissioner sees no reason to doubt that that is the case, and he is satisfied that section 12(1) of FOIA is engaged.
27. Regarding section 16(1) of FOIA, in its submission to the Commissioner the BFI has offered to meet the complainant to see if it can help them to refine their request to bring complying with it within the cost limit. In the Commissioner's view, given the circumstances that the BFI has explained, it does not seem possible that a request about film 'materials' (ie Items) not available for viewing could be meaningfully refined such that the BFI could comply with it within the cost limit. And the complainant has now derived a figure for film 'Works' themselves, with which they appear to be satisfied.
28. With hindsight, the BFI might have suggested to the complainant that they could carry out the Collection Search for film Works, whilst also noting that such a search would not retrieve the specific information about materials (ie Items) they had requested. On balance however, because the complainant had requested information about film 'materials' and because the BFI had explained its collection and some of terminology it uses in its response to their earlier request, the Commissioner does not consider there has been a breach of section 16(1).

## **Right of appeal**

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29. 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@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)

30. 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.
31. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**