

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2023

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant has requested information about costs associated with a team’s relocation. The BBC explained that the information is derogated and excluded from FOIA.
2. The Commissioner’s decision is that the BBC holds the information for the purposes of ‘journalism, art or literature.’ The information is therefore not covered by FOIA, and the BBC does not need to take any corrective steps.

Request and response

3. The complainant wrote to the BBC on 22 March 2023 and requested information in the following terms:

“How much has the BBC spent on travel and accommodation for members of its technology team since the move to Glasgow announced in 2021?

Please could you provide the information as a spreadsheet showing the dates and reason for travel, the member of staff involved and the cost.”

4. The BBC responded on 17 May 2023. It explained that it believes that the information requested is excluded from FOIA because it is held for the purposes of 'journalism, art or literature.' It explained that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by FOIA if it is held for 'purposes other than those of journalism, art or literature'. It concluded that the BBC was not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities. It therefore would not provide any information in response to the request for information.

Reasons for decision

5. In their complaint to the Commissioner, the complainant said that they understood that the derogation "...is designed to protect the creative inputs into BBC programming." They said that they are not seeking this kind of information but general information about the way the BBC uses public funds.
6. This reasoning therefore covers whether the information the complainant has request is derogated information, and so not within scope of FOIA.
7. Schedule 1, 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 isn't obliged to comply with part I to V of the Act where it holds information for 'purposes of journalism, art or literature.' The Commissioner calls this situation 'the derogation.'
9. The House of Lords in **Sugar v BBC [2009] UKHL 9** confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the requested information is caught by the derogation.
10. 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)

11. The Supreme Court endorsed this approach in **Sugar (Deceased) v British Broadcasting Corporation and another [2012] UKSC 4**¹ 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.
12. 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.
13. If a sufficiently direct link is established between the purposes for which the BBC holds the information and any of the three derogated purposes – ie journalism, art or literature - it is not subject to FOIA.
14. 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.

¹ <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

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.’

15. The Commissioner adopts a similar definition for the other elements of the derogation, in that the information must be used in the production, editorial management and maintenance of standards of those art forms.
16. The information that has been requested in this case is the amount the BBC has spent on travel and accommodation for members of a particular team as the result of a move to Glasgow.
17. In a submission to the Commissioner the BBC explained that the article referenced in the request states that “BBC News's Climate and Science team will move to Cardiff, while the Technology team will shift to Glasgow... ”.
18. The BBC says that BBC Procurement liaised with the BBC’s Finance Business Partners in the News division. These areas have confirmed that the individuals affected by the move to Glasgow that the complainant is interested in are from the News Technology team and the relevant budgets are ‘newsgathering’ specific budgets.
19. The News Technology team is part of the News division – an output division –
20. and these budgets are output/content budgets for newsgathering. Decisions made about how a content budget should be allocated are editorial in nature, and they have “flow on” effects on how the BBC prioritises and allocates resources.

21. The BBC has noted that the Commissioner has accepted on a number of occasions that the BBC has a fixed resource in the licence fee and resource allocation goes right to the heart of editorial decision making (for example FS505908193², FS50422017³, FS50314106⁴ and IC-41058-F2Z1). The BBC says that the same principles apply in this case, and for these reasons, the information requested in this case is derogated from FOIA.
22. Having considered the request, the BBC's correspondence to the complainant and its submission to him, the Commissioner is satisfied that there is a relationship between the requested information and editorial decisions associated with the BBC's output on news and current affairs.
23. The Commissioner understands that the BBC has embarked on a programme of relocating staff away from London in order to "better reflect" all parts of the UK. That is itself an editorial decision. The Commissioner is therefore satisfied that the information the BBC holds on costs associated with moving its News Technology team to Glasgow as part of that programme is held for the purpose of journalism, art or literature. Specifically, the information falls within the definition of journalism as it concerns editorial decisions about the BBC's newsgathering and news output.
24. The Commissioner's decision is therefore that the BBC holds the requested information for the purposes of journalism and was not obliged to comply with Parts I to V of FOIA. Since the information is derogated, the Commissioner has no jurisdiction in this matter and therefore no statutory power to order disclosure.

² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560055/fs_50590819.pdf

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/703250/fs_50422017.pdf

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2010/566958/fs_50314106.pdf

Right of appeal

25. 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

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

26. 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.
27. 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
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Wycliffe House
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