

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the British Film Institute (BFI) about the setting up of a new regulatory body, with the request to cover the period June 2021 – August 2022. BFI had voluntarily provided information on this subject previously and its position is that it doesn't hold any further relevant information.
2. The Commissioner's decision is that, on the balance of probabilities, BFI doesn't hold any information relevant to this request, for its own purposes, and has complied with section 1(1) of FOIA. Nor does BFI hold information on behalf of another person, in which case section 3 of FOIA would have applied.
3. BFI doesn't need to take any corrective steps.

Background

4. In his decision in [IC-235054-Z1S1](#), the Commissioner found that, while it had disclosed relevant information voluntarily, BFI didn't hold relevant information about the setting up of a new body under FOIA, and therefore section 3 of FOIA applied.
5. The complainant considers that BFI only assessed whether it held relevant information for the period after August 2022 and didn't carry

out an assessment for the period June 2021 to August 2022 which is the period they consider their request covered.

Request and response

6. On 27 February 2023, the complainant had made the following information request to BFI:

“Can you please give me access to the transcripts or recordings or other notes, of the meetings (whether these are held by the BFI or the DCMS on behalf of the BFI) of all the meetings in which they took part in regard to the setting up of a new regulator for the creative industries (previously known as ISA and now CIISA).”
7. BFI’s original response to this request is discussed in the above referenced decision.
8. On 27 November 2023, the complainant wrote to BFI and said,

“Having reviewed that resulting decision notice again, I can see in point 23 that the case officer only reviewed materials from August 2022 on, around the time of Jennifer Smith’s secondment from the BFI...
...Therefore, I ask for materials relating to the set up of this new standards authority (CIISA and before that ISA). Minutes, notes, records, emails, text messages, in whatsoever form, whether on official or personal devices, from before the time period to which IC-235054-Z1S1 relates (ie around August 2022). Please note, this new request does not only relate to meeting minutes, but all written materials of whatever nature.”
9. On 19 December 2023 BFI advised the complainant that it didn’t hold any other information.
10. In its internal review on 21 December 2023, BFI confirmed to the complainant that its IT department had advised that files were deleted one month after Jennifer Smith left BFI. [Jennifer Smith is currently the interim CEO of the Creative Industries Independent Standards Authority (CIISA)].
11. On 10 May 2024 BFI wrote to the complainant again and advised,

“We consider that we have answered, either directly or through the ICO, a number of requests from you on this matter including undertaking word searches using the terms you have suggested – that is word searches across the whole BFI email and filing systems – and, in addition, we have also requested colleagues to review inboxes.

We can confirm that no further documentation has been identified.”

Reasons for decision

12. The complainant has told the Commissioner that they're interested in the period June 2021 to August 2022. The Commissioner notes that they hadn't referred to this period in their original request or their correspondence to BFI of 27 November 2023.
13. However, following BFI's correspondence of 10 May 2024, the complainant remains unconvinced that it doesn't hold any other information. This reasoning covers whether BFI holds information within scope of the complainant's request of 27 November 2023, which covers the period June 2021 to August 2022.
14. The decision in IC-235054-Z1S1 found that, although BFI held information relevant to the same request for the period after August 2022, it didn't hold that information for its own purposes under FOIA. That information was associated with Jennifer Smith who was seconded to CIISA from BFI at the time. Jennifer Smith had saved information about CIISA to BFI's IT system as CIISA didn't yet have its own system.
15. The Commissioner considers it's possible that if the BFI holds relevant information for the period June 2021 to August 2022 it may hold some of this information, at least, for its own purposes.
16. Under section 1(1)(a) of FOIA anyone who requests information from a public authority is entitled to be told if the authority holds the information. Under section 1(1)(b) the authority must communicate the information to the applicant if it's held and isn't exempt information.
17. In its submission to the Commissioner BFI has confirmed that to the best of its knowledge and ability it's confident that it doesn't hold any further materials relevant to the request.
18. BFI says that, with its IT colleagues, it has carried out numerous keyword and acronym searches, including all of the search terms that the complainant has suggested to it. It has investigated emails and any documents held, both at the time of the original request and also any subsequent request where the complainant suggested additional search terms. BFI says it has also asked for these terms to be combined as much as is possible and not searched in isolation.
19. BFI has also contacted colleagues directly who would have been involved in the discussions about setting up CIISA, for example Jennifer Smith's line managers, inclusion and public affairs colleagues, and other

interested parties in the BFI. Those individuals supplied all of the information they have and, where appropriate, BFI says, it has then supplied this to the complainant.

20. BFI has acknowledged that it's of course possible that Jennifer Smith did send more email correspondence or documentation, or both, around the time of CIISA creation. However, it says, that doesn't signify that these emails have been retained by those who received them. BFI notes that this could be for myriad reasons but will most likely be because emails are deleted as a matter of routine records management. Each BFI employee has a limited amount of inbox capacity and are therefore encouraged to delete emails regularly if they're no longer required or aren't relevant to active work BFI is involved in.
21. BFI has confirmed that it wouldn't be uncommon for emails received in 2021 to have been deleted by February 2023 when the original request came in. BFI has also confirmed, however, that it doesn't believe that any such emails would have been deleted after the request came in.
22. BFI has told the Commissioner that it's also possible that setting up CIISA would have been discussed amongst colleagues. But, BFI says, it's sincere in its belief, and from the research work that it's done, that it has no records of any such discussion. In addition, when BFI was dealing with this request and speaking directly to colleagues, they advised that Jennifer Smith was the lead contract contact for all of this [ie setting up CIISA] and other BFI employees' involvement was minimal.
23. BFI has concluded its submission by stating that it understands that creating a new regulatory body is of interest to the sector and the BFI, but it sincerely believes that it has provided all the appropriate information within scope of the request that it holds.

The Commissioner's view

24. BFI has now considered the complainant's request a number of times. It has carried out a number of searches and discussed the request with relevant people. BFI has also addressed the various questions that the complainant has put to it. For the reasons BFI has explained, including its retention schedule, the Commissioner is satisfied that, on the balance of probabilities, BFI doesn't hold any information within scope of the complainant's request, for its own purposes, for the period June 2021 to August 2022. The Commissioner's decision is therefore that BFI has complied with section 1(1) of FOIA. BFI also doesn't hold any on behalf of another person but, if it had, section 3 of FOIA would have applied as in IC-235054-Z1S1.

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.

Cressida Woodall
Senior Case Officer`
Information Commissioner's Office
Wycliffe House
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