

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about pension payments and the operation of the BBC Pension Scheme. The BBC provided a response to the first part of the request. It refused the remainder of the request stating that the requested information was held on behalf of BBC Pensions and was not held for the BBC's own purposes.
2. The Commissioner's decision is that the disputed information is not held by the BBC as per section 3(2) of FOIA – Information held on behalf of.
3. The Commissioner does not require further steps.

Request and response

4. On 7 November 2023, the complainant wrote to the BBC and requested information in the following terms:

"1...Does the BBC hold information relating to the operation of the BBC Pension Scheme?

2...Does the BBC hold information about pensions payments currently being made to former and or serving members of staff?

3...If the answer to question two is yes can you state what is the highest level of pension currently being paid to former and or existing member(s) of staff. Can you state how many former and or existing

employees are currently receiving a pension at this level.

4...If the answer to question two is yes can state how many former and or existing employees are currently receiving a pension which is in excess of £50,000. Can you state how many of these are in receipt of a pension which is in excess of £100,000.”

5. The BBC responded on 30 November 2023. It advised that the first part of the request was broad, but it signposted the complainant to information on its website that may be useful. The BBC also invited the complainant to submit a clarified request if the web link did not provide the information they were seeking. For the remainder of the request, the BBC advised that, although it held information within scope of the request, it was held on behalf of BBC Pension Fund Limited ('BBC Pensions') and not for the BBC's own purposes. The BBC explained that BBC Pensions is a separate legal entity and not subject to FOIA.
6. Following an internal review, the BBC wrote to the complainant on 30 January 2024. It upheld its position that for parts two to four of the request, the information was held on behalf of BBC Pensions. For part one, the BBC considered that it could have provided better advice and assistance when advising the complainant that the question was very broad and again invited the complainant to clarify this part of the request.

Scope of the case

7. The complainant contacted the Commissioner on 15 February 2024 to complain about the way their request for information had been handled.
8. On the basis of their complaint, the Commissioner considers the scope of his investigation is to determine whether the BBC holds the requested information in parts two to four of the request for the purposes of FOIA.

Reasons for decision

Section 6 (1) – publicly-owned companies

9. Section 6 (1)(b)(ii) provides that a company is a “publicly-owned company” for the purposes of FOIA if it is wholly owned by any public authority listed in Schedule 1 other than any authority which is listed only in relation to particular information.

10. The BBC has stated that BBC Pensions “is a separate legal entity to the BBC and is a wholly-owned subsidiary of the BBC which exists only for the purpose of acting as sole corporate trustee of the Scheme.”
11. The Commissioner notes that the BBC is listed in Schedule 1, Part VI of FOIA in respect of information held for purposes other than those of journalism, art or literature. Therefore, although BBC Pensions is a wholly owned subsidiary of the BBC, it does not fall within the definition of a publicly owned company under section 6(1)(b) of FOIA because the BBC is covered by FOIA only in relation to particular information. Additionally, BBC Pensions is not listed in Schedule 1 as a public authority in its own right or designated as a public authority by order under section 5 of FOIA.
12. In view of the above, the Commissioner concludes that BBC Pensions is not a public authority for the purposes of the Act.

Section 3(2) – Information held by or on behalf of a public authority

13. Section 1 of FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds information of the specified nature in the request and if it does, it must provide it to the requestor unless a valid exemption applies under FOIA for not doing so.
14. Section 3(2) sets out that for the purposes of FOIA, information is held by a public authority if: a) It is held by the authority, otherwise on behalf of another person, or b) It is held by another person on behalf of the authority.
15. As explained in the Commissioner’s published guidance¹, each case needs to be reviewed individually to determine whether a public authority holds information for its own purposes. There are various factors that will assist in determining whether the public authority holds the information for the purposes of FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
16. Factors that would indicate the information is not held by a public authority include:

¹ [Information you hold for the purposes of FOIA | ICO](#)

- the authority has no access to, use for, or interest in the information
 - access to the information is controlled by the other person
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronically.
17. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the BBC holds the requested information, or if BBC Pensions holds it on behalf of the BBC.

The complainant's position

18. The complainant has argued that the pension scheme is key to the BBC's own operation, so it is unlikely that it does not hold information relating to the operation of the scheme. The complainant referred to news articles that state that the BBC sometimes subsidises the pension scheme with funds from the license fee and argued that the BBC would not do this without having some documentation relating to the pension scheme.
19. The complainant added that the BBC Corporate Press Office handles press enquiries on behalf of the pension scheme and could not do this if the BBC did not hold information about the pension scheme.

The BBC's position

20. In its internal review response, the BBC explained that BBC Pensions operates as a trust, and the assets held in the pension scheme are held by BBC Pensions as the trustee. It stated that: "BBC Pension Trust Limited is a wholly separate legal entity to the BBC with separate functions, and its assets are entirely separate from those of the BBC."
21. The BBC explained that it is currently appointed by BBC Pensions to provide administration services for the pension scheme. There is an agreement between the BBC and BBC Pensions that sets out the service terms, their scope and the expected standards. The BBC has explained that information held by the BBC in this capacity is held on behalf of BBC Pensions and not for its own purposes.
22. At the Commissioner's request, the BBC provided a copy of the Administration Agreement document and explained that although the BBC physically holds pensions information pursuant to the terms set out

in the Administration Agreement, it does so as a data processor and not as a data controller and is restricted by the agreement in terms of the way it handles that information. The BBC added that: "in its role providing the administrative services the BBC does not control the pensions information or use it for any of the BBC's own functions which are set out in the Royal Charter and Agreement."

23. In its submission to the Commissioner, the BBC explained that BBC Pensions has appointed a Pensions Executive to support its Board and administer the pension scheme on its behalf. The Executive and staff who report to them are employed by the BBC but are managed by and accountable directly to BBC Pensions. The BBC further explained that the costs related to the administration services provided for the BBC Pension Scheme are met by the BBC Pensions and not by the BBC. This includes the cost of BBC staff required to provide such administration services.

The Commissioner's view

24. The Commissioner acknowledges that it would seem reasonable to expect the BBC to hold information about the pension provision for its own staff, particularly as BBC staff are still involved in the day-to-day administration of the fund. However, the Commissioner notes that the BBC only has access to information about the pension fund as a data processor within the terms set out in the Administration Agreement. He also notes that, although the administrative tasks are carried out by BBC staff under the current agreement, BBC Pensions could equally contract with another organisation to carry out its pensions administration.
25. The Commissioner is minded that he has previously issued a number of decisions where he has found that where a public authority is carrying out day-to-day administrative tasks on behalf of another organisation, it can only be considered to hold information under FOIA if there is an appropriate connection between the information and its functions. The Commissioner issued a decision on a similar request topic concerning the BBC in 2010².
26. In the case of the BBC, it has essentially outsourced the pension management function to BBC Pensions and therefore has no need for the requested information for its own purposes.
27. The Commissioner is therefore satisfied that the BBC does not hold the requested information for parts two and four of the request for the

² [FS_50266932.pdf \(ico.org.uk\)](#)

purposes of FOIA. The BBC doesn't hold the information itself, and BBC Pensions doesn't hold it on the BBC's behalf.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
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Wycliffe House
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