

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

### **Decision notice**

**Date:** 1 May 2024

**Public Authority:** Channel Four Television Corporation  
**Address:** 124 Horseferry Road  
London  
SW1P 2TX

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

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1. The complainant submitted a request to Channel Four Television Corporation (Channel 4) for information relating to the insertion of ad breaks in certain online programmes.
2. The Commissioner's decision is that this information was held by Channel 4 for the purposes of journalism, art or literature and so was not covered by FOIA. He therefore upholds Channel 4's position.
3. The Commissioner does not require further steps, as a result of this decision notice.

#### **Request and response**

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4. On 10 January 2024, the complainant wrote to Channel 4 and requested information in the following terms:

"I am trying to establish why Channel 4+ are inserting adverts for your own programs in certain online series...

I understand and accept that under the T&Cs Channel 4+ has the right to insert advertising in programs, but only where you are contractually obliged to do so.

I am now formally requesting under FOI regulations that Channel 4+ provide evidence that you are acting in accordance with your T&Cs and that you do have a legal obligation to include ad-breaks (promoting anything of your choice) within these programs.”

5. On 5 February 2024, Channel 4 responded to the request. Channel 4 explained that it did not believe the information was caught by FOIA because it was held for the purposes of “art, journalism or literature”. It therefore did not provide any information in response to the request.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 19 March 2024 to complain about the way their request had been handled.
7. The Commissioner wrote to the complainant and explained that it was his preliminary view that their request would fall under the derogation.
8. The complainant did not agree with the Commissioner’s preliminary view. Therefore, the scope of this case and the following analysis is to determine whether the information requested is excluded from FOIA because it was held for the purposes of journalism, art or literature.

### **Reasons for decision**

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#### **Section 3-information held for the purposes of FOIA**

9. Schedule One, part VI of FOIA provides that Channel 4 is a public authority for the purposes of FOIA, but it only has to deal with requests for information in some circumstances. The entry relating to Channel 4 states:

“The Channel Four Television Corporation, in respect of information held for purposes other than those of journalism, art or literature.”
10. This means that Channel 4 and other public service broadcasters, such as the BBC, have no obligation to comply with parts I to V of the Act where information is held for the purposes of journalism, art or literature. The Commissioner calls this situation “the derogation”.
11. 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 information is caught by the derogation. The following analysis focuses on the derogation.

12. The scope of the derogation was considered by the Court of Appeal and later, on appeal by the Supreme Court in the case *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC<sup>1</sup>. The leading judgement 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).

13. The Supreme Court endorsed this approach 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. The Supreme Court's ruling would apply equally to Channel 4, as it does to the BBC, as Channel 4 is a publicly owned broadcaster which is commercially funded.

14. The Commissioner adopts a similar definition for the other elements of the derogation, in that it will catch information used in the production, editorial management and maintenance of standards of those art forms.

15. The complainant has argued that the purpose of their request is "to confirm that Channel 4 are conforming to their contract with me regarding 'add-free' subscription" and that their request would "fall under performance."

16. Channel 4 stated that the Act does not apply to information concerning, relating to, or closely associated with Channel 4's output (e.g. any content on TV, film, online etc).

17. The Commissioner's view is that the information requested, relates to advertising in programmes, and therefore is information held for the purpose of 'journalism, art or literature'. This is because this information relates to decisions about broadcasting adverts and is therefore directly linked to Channel 4's output.

18. The Commissioner has therefore found that Channel 4 was not obliged to comply with Parts I to V of FOIA in relation to the complainant's information request.

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

## **Right of appeal**

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19. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**