

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 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 requested information from the BBC about the production of a tourist marketing series, with a crew reportedly filming in Bermuda. The BBC responded that the requested information was covered by the derogation and hence excluded from FOIA.
2. The Commissioner's decision is that this information, if held at all, is held by the BBC for the purposes of journalism, art or literature and so is not covered by FOIA. He therefore upholds the BBC's position and requires no steps to be taken in this case.

Request and response

3. On 2 July 2024, the complainant wrote to the public authority and requested information in the following terms:

"I ask to be provided the terms of reference for what appears to be the BBC producing a tourist marketing series for the Islands. The film crew is reported to be in Bermuda currently apparently to:

- a) 'mostly document "feel-good" stories...'
- b) 'show Bermuda, the BPS and the RBR coastguard in a good light...'
- c) 'encourage UK citizens to consider visiting the island'.*

The crew is said to be working with the Bermuda Tourism Authority

I wish to be provided all information the BBC can release in relation to this specific filming which addresses the issue of an impartial approach i.e. either supports or undermines the above ('a' to 'c') intentions; the measures to ensure the BBC upholds high standards of impartiality, crucial for its role as a public service broadcaster in a diverse and changing media landscape

* <https://www.royalgazette.com/general/new...>
<https://bernews.com/2024/07/uk-tv-series...>"

4. On 17 July 2024 the BBC responded to the request. The BBC explained that it believed that the information would be held for the purposes of "art, journalism or literature" and would therefore not be caught by FOIA. As a result, the BBC did not consider it was obliged to provide the information.

Reasons for decision

5. The following analysis covers whether the information requested is excluded from FOIA because it was held for the purposes of "journalism, art or literature".
6. FOIA only applies to the BBC to a limited extent. Schedule One, Part VI of FOIA provides that the BBC 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 the BBC states:

"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature."
7. This is known as the "derogation". This means that information that the BBC holds for the purposes of journalism, art or literature - in broad terms, its output or related to its output - is not covered by FOIA. If information falls within the derogation, then that is the end of the matter; there is no public interest test or similar provision to consider the merits of disclosure.
8. Although it is publicly funded through the licence fee, the BBC competes with other commercial broadcasters who are not subject to FOIA. Releasing information about its output, or related to its output, could therefore commercially disadvantage the BBC. However, for the derogation to apply, the BBC does not need to demonstrate that it would suffer commercial harm if the information were to be disclosed. It only has to demonstrate that the information is held for a derogated purpose.

9. Broadly, BBC information that is covered by FOIA includes information about: how the BBC is managed and run, including the TV licence; the BBC's employees and its human resources practices; and the BBC's performance.
10. BBC information that is not covered by FOIA includes the following: information about the BBC's on-screen or on-air "talent" including its presenters and journalists; information about BBC programmes including any spend or editorial decisions associated with its programming; materials that support the BBC's output, such as the script of a television programme or a source drawn on for an investigation; and viewer and listener complaints to the BBC about the above.
11. The derogation as it applies to the BBC is discussed in more detail in numerous published decisions made by the Commissioner, such that he does not consider it necessary to reproduce that detail again here. However, key to the derogation is the Supreme Court decision in *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC 4¹
12. The Supreme Court explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output or the BBC's journalistic or creative activities involved in producing such output.
13. 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.

The complainant's view

14. The complainant argued that the information ought to be disclosed, stating:

"The BBC is not being open transparent and accountable. It is this to which my request clearly relates.

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

I am writing to express my concerns regarding the BBC's approach to transparency and accountability, specifically about its impartiality. I have sought information about your approach to inform, educate and entertain. Specifically, I have noted an approach that suggest an agreement to present Public Authorities in a favourable light, compromising impartiality. Additionally, the aired material appears to be subject to vetting and approval by the Public Authority before public release.

This conduct has been documented and made public at the supplied links, for example:

<https://www.royalgazette.com/general/new...>

My request does not relate to information "held for purposes of journalism, art, or literature." It pertains to the BBC (or their agent) seemingly agreeing to stray from an impartial position, acting other than neutrally and prepared to present a biased account.

My request concerns the management and running of the BBC, specifically the policy and strategy that enable the aforementioned conduct. It does not seek to hamper the BBC's creative activities or its ability to deliver its mission. Clearly, the information I have sought does not fall under the cited exemptions.

The request is essential to maintaining high standards of accountability at the BBC."

15. As explained above, information about editorial decisions relating to the content of a television series or materials that support the production of that series, if held at all, would be derogated information as it would clearly be associated with the BBC's output.
16. The Commissioner is satisfied, based on the very well established precedent set in the numerous other decisions he has made in cases involving the BBC, that, if held at all, the information requested by the complainant would be held for the purposes of journalism, art or literature. It therefore follows that the information is not covered by FOIA, and the BBC is not obliged to comply with the complainant's request.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF