

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2017

Public Authority: The British Broadcasting Corporation ("the BBC")

Address: Broadcast Centre
White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant requested data relating to lessons learned within the BBC. The BBC refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the FOIA (cost of compliance). The complainant complained to the Commissioner that, in refusing his request, the BBC had not complied with section 16 of the FOIA – duty to provide advice and assistance.
2. The Commissioner's decision is that the BBC has breached section 16 of the FOIA, since it failed to provide the complainant with adequate advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16(1) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 April 2017, the complainant wrote to the BBC and requested information in the following terms:

"all of your lessons identified or lessons learned data within your organisation, in accordance with the Association for Project Management good practice. It would be helpful if you could constrain the scope of lessons relating to all projects/programmes, change programmes, portfolio management and transformation, rather than day to day management (business as usual activities)"

6. The BBC responded on 16 May 2017 in the following terms:

"Under section 12 of the Act, we are allowed to refuse to handle the request if it would exceed the appropriate limit, which is currently set by the Regulations (SI 2004/3244) as £450 (equivalent to two and a half days work, at an hourly rate of £25). We estimate that given the very broad and unspecific nature of your request, it would take us more than two and a half days to deal with your request. We have therefore refused to handle your request. If you would like to submit a narrowed request, we would be happy to consider it."

7. Following an internal review, the BBC wrote to the complainant on 13 July 2017. It upheld its decision to refuse the request under section 12, and stated that it considered it had complied with its duty under section 16.

Scope of the case

8. The complainant contacted the Commissioner on 24 July 2017 to complain about the way his request for information had been handled.
9. The Commissioner wrote to the BBC, which provided detailed evidence regarding its application of section 12 and the complainant agreed to withdraw this part of his complaint.
10. The Commissioner considers that the scope of the case has been to determine whether the BBC, when refusing the request under section 12, complied with its duty under section 16 to provide advice and assistance to the complainant.

Reasons for decision

Section 16 – duty to provide advice and assistance

11. Section 16 of the FOIA states that:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any authority which, in relation to the provision of advice or assistance in any case, conforms to the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

12. Section 16 refers to the 'code of practice'; that is, the *Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000, issued under section 45 of the Act* ("the Code").

13. As stated in the Code, one of its aims is to "*protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them.*"

14. Paragraph 14 of the Code states:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling."

15. In this case, the Commissioner has been asked to consider whether the BBC has complied with the requirements of the Code; that is, has complied with its duty under section 16(1) of the FOIA.

16. The Commissioner has therefore considered the BBC's responses to the complainant.

The BBC's responses

17. In its initial response of 16 May 2017, the BBC stated: "*If you would like to submit a narrowed request, we would be happy to consider it.*"

18. The complainant requested an internal review on 28 June 2017. In his email, he stated:

"I would be happy to constrain my request but without understanding what information you have available it is difficult to do so. The ICO guidance is to help the requester to understand what information may be available, to help me refine my request."

19. The BBC provided an internal review response on 13 July 2017 and stated: *"the BBC provided the Applicant with an opportunity to submit a further, more refined request. I can see that it may have been helpful for the BBC to provide an example of how to narrow the request to the Applicant, for instance by narrowing the scope of the request to a particular division of the BBC or to a particular program or area of work."* Notwithstanding this statement, the BBC stated that in its view it had not breached section 16 of the FOIA.

20. The complainant returned to the BBC later on 13 July 2017 and referred specifically to the ICO guidance¹ in this area. In particular, he quoted the following section from page 18-19:

"A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit".

21. The BBC provided a further response later the same day and stated:

"Further to the BBC's correspondence of 13 July 2017, and in keeping with the BBC's duty to provide reasonable advice and assistance to a requestor under section 16 of the FOIA, I can confirm that the BBC has a Lessons Learnt Project register. However, it is not a [sic] compulsory for all projects to be maintained in that register. This means that the information is incomplete. Each project register is controlled by a BBC moderator who allows access to BBC users that have a need to see the information. Gaining access to the information would require each project manager across all divisions of the BBC to be contacted for access to the relevant register. The material would then need to be retrieved and collated. This has been included in the estimate that

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

compliance with this request would far exceed the appropriate limit of 18 hours and section 12 is applicable to this request."

22. The BBC also explained that much of the information contained on the registers would be likely to be exempt information, citing section 43(2) of the FOIA as being the likely exemption to be engaged – prejudicial to commercial interests.

The Commissioner's decision

23. The Commissioner has considered whether the BBC provided sufficient advice and assistance to the complainant.
24. She considers that the initial response of 16 May 2017, which advised the complainant only that the BBC would consider a narrower request, was not sufficient to provide meaningful advice or assistance under the wording of the Code, since it did not contain any suggestions as to how he could narrow the request.
25. This was effectively repeated in the internal review response, as explained at paragraph 18, above.
26. She notes that the BBC then engaged further with the complainant to explain its position and provided a second response on 13 July 2017 after the internal review response had been provided. However, in her view, this additional response, while it gave more detail of the BBC's application of section 12, focused on why information could not be provided rather than addressing its duty to provide advice and assistance under section 16. It did not suggest ways in which the complainant could direct his request to, say, a particular time period, a particular division of the BBC, or to a particular number of projects.
27. The Commissioner is aware that the scope of the request was expressed in very broad terms and it may be that the BBC considered, for that reason, that it was not able to fulfil the request nor easily to advise on how the complainant may be able to receive information.
28. However, referring to the wording of the Code, it is not apparent that the BBC "*consider[ed] providing an indication*" of what could be provided within the costs ceiling. As explained above, ICO guidance recommends that best practice would be for "*authorities [to] inform the requestor of what information can be provided within the appropriate limit*" as this is practical for the requester going forward.
29. She also notes that the BBC has explained that it considers that some of the information being requested is likely to be exempt from disclosure under section 43(2) of the FOIA. In cases where the public authority considers that all of the requested information is exempt from

disclosure, it can be sufficient to comply with the requirements of section 16 to explain this to the requester. However, the BBC has stated that some, rather than all, of the requested information is likely to be exempt. This therefore leaves the possibility that there is information that could potentially be made available.

30. The Commissioner is aware that the complainant has made subsequent requests to the BBC. There is a pending ICO investigation into the handling of one of these subsequent requests, which was refused. In her view, this is an indication that the complainant has not received sufficient advice and assistance to enable him to narrow his request effectively and she requires the BBC to give consideration to what further advice and assistance could have been provided in response to the request under consideration in this decision notice.
31. The Commissioner's decision is that the BBC has not complied with its duty under section 16. She requires the BBC to provide advice and assistance to enable the complainant to submit a refined request within the cost limit.

Right of appeal

32. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

33. 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.
34. 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

Alun Johnson
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