

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2021

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

Decision (including any steps ordered)

1. The complainant has requested all correspondence between the British Broadcasting Corporation (BBC) and Ofcom in relation to Laughlines Limited.
2. The BBC confirmed that it does not hold any information that falls within the scope of this request.
3. The Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any information that falls within the scope of this request.
4. The Commissioner does not require the BBC to take any further steps as she is satisfied that this request has been dealt with in line with section 1(1) (General right of access to information held by public authorities) of the FOIA.

Request and response

5. On 20 November 2020, the complainant wrote to the BBC and requested information in the following terms:

"Please forward all communications held between the BBC and Ofcom in respect of Laughlines Ltd and/or [Redacted]"
6. The BBC responded on 10 December 2020. It stated that it did not hold any information that falls within the scope of the request.

7. Following an internal review the BBC wrote to the complainant on 3 February 2021, upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 16 March 2021 to complain about the way that their request for information had been handled.
9. The complainant explained that information that fell within the scope of their request should be held by the BBC's legal department. The complainant also explained that they had submitted previous requests for information and the BBC had confirmed that information was held in relation to these requests.
10. The Commissioner considers the scope of her investigation to be to determine whether, on the balance of probabilities, the BBC is correct when it says it does not hold any information that falls within the scope of this request.

Reasons for decision

11. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. In this case, the complainant disputes the BBC's position that it does not hold any correspondence exchanged with Ofcom relating to Laughlines Ltd.
13. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
14. In order to reach her determination, the Commissioner asked the BBC to provide detailed explanations as to why the requested information was

not held at the time that the request was received. The Commissioner also asked the BBC to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.

The BBC's position

15. The BBC explained to the complainant in its internal review outcome that, if information were held, it would be held by either the BBC's Regulation Policy Team or the Legal Competition Team. Both of these teams are responsible for corresponding with Ofcom regarding competition and regulatory policy matters. At the time that the internal review was conducted, the relevant senior leaders within these teams were consulted.
16. These senior leaders are: the BBC's Controller of Regulation, the Legal Head of Regulatory and Competition Legal and the Head of Legal Commercial Rights and Business Affairs. These three senior leaders oversee the BBC's relationship with Ofcom.
17. These senior leaders have previously been involved in matters regarding Laughlines and would have knowledge of any Ofcom correspondence relating to Laughlines.
18. Upon receiving the Commissioner's investigation letter, the BBC consulted these senior leaders again who 'confirmed they do not hold correspondence with Ofcom about Laughlines and in any event have searched their emails for the terms 'Laughlines', '[Redacted]' and '[Redacted]' to confirm this point.'
19. The BBC has explained that, if this type of correspondence were held, it would trigger the BBC's corporate retention schedule which includes 'regulatory legal advice' as a category of records that must be retained for a minimum of 6 years.
20. The Commissioner notes the Head of Regulatory Legal who would provide, or oversee the provision of such advice, has confirmed twice that they do not hold any information that falls within the scope of this request.
21. The BBC has gone on to explain that fair trading advice is another category that would trigger the BBC's corporate retention schedules and would be retained for a minimum of 5 years.
22. The Commissioner notes the BBC's Controller of Regulation who would provide, or oversee the provision of such advice, has confirmed twice that they do not hold any information that falls within the scope of this request.

The Commissioner's view

23. The Commissioner acknowledges the complainant's concerns as outlined in paragraph 9. However, the scope of this request is clear and will only capture correspondence exchanged between Ofcom and the BBC up until the date that the request was made.
24. The Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any information that falls within the scope of the complainant's request.

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.

Signed

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF