

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 August 2010

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Summary

The complainant made a request to the BBC for a series of statistical information relating to annual payments made by its pension scheme and copies of all correspondence between the BBC's human resources department and BBC Pension Trust relating to the financial state of the pension fund. The BBC responded that the statistical information was held on behalf of the BBC Pension Trust and therefore falls outside the definition of information held by a public authority under section 3(2)(a) of the Act. It also responded that it does not hold information falling within the scope of the request for correspondence. The Commissioner's decision is that the BBC handled the request in accordance with the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made a request to the BBC on 15 July 2009 for the following information:

"1. What is the current total annual pension pay out to former employees? ie. What is the fund paying out in pension payments? Could you also provide figures for each of the last four financial years? Are there any projections for the current financial year?

2. How many former BBC employees are currently in receipt of a pension from the scheme? Could you also provide figures for each of the last four financial years?

3. How many people are currently in receipt of a pension which involves annual pay outs of £100,000 or more? Could you also provide figures for each of the last four financial years?

4. Could you provide all correspondence (including emails) between the BBC's personnel/human resources department (or equivalent) and the BBC pension fund (and or trustees) which relates in any way to the operation and or administration and or viability and or financial state of the fund. Please note that I am only interested in correspondence from March 1 2009 to the present day? Please feel free to redact the names and addresses of any BBC employees who are in receipt of payments from the fund?"

3. The BBC responded on 11 August 2009 and answered requests 1 and 2. In response to request 3, it stated that the requested information is held by the BBC on behalf of the BBC Pension Trust Ltd in order to administer the BBC Pension Scheme, and therefore falls outside the definition of information held by a public authority under section 3 (2)(a) of the Act. The BBC added that the BBC Pension Trust is not itself a public authority for the purposes of the Act. The BBC also stated that it does not offer an internal review when information is not covered by the Act. In response to request 4, the BBC stated that it does not hold any correspondence between its human resources department 'BBC People' and the BBC Pension Trust which falls within the scope of the request. However, it added that personal benefit quotations are sent to individual members of the pension scheme via BBC People and therefore this information would fall within the scope of the request. The BBC withheld this information under section 40 (2) of the Act because disclosure would be unfair and would contravene the first data protection principle.

4. The complainant wrote to the BBC on 22 August 2009 and requested an internal review of its response to request 4. He stated that he was not seeking the information about individual claimants, which had been withheld under section 40 (2) of the Act. However, he said that he did not accept the BBC's response that it does not hold other correspondence of relevance to the request.

5. The BBC provided its internal review response on 6 October 2009 and upheld the original response that the BBC does not hold any correspondence between BBC People and BBC Pension Trust which falls within the scope of the request. However, the BBC noted that correspondence relevant to the request may be held by other departments within the BBC and suggested that he may wish to submit a new request for information.

The Investigation

Scope of the case

6. On 26 August 2009 the complainant contacted the Commissioner to complain about the BBC's response that the information it holds relating to request 3 falls outside the definition of information held for the purposes of the Act under section 3 (2).
7. The complainant also noted that he had requested an internal review of the BBC's response to request 4 and may contact the Commissioner about that request at a later date. On 28 October 2009 the complainant wrote to the Commissioner again and confirmed that, following the BBC's internal review, he also wished to complain about the BBC's response that it does not hold relevant correspondence between BBC People and BBC Pension Trust.
8. The Commissioner notes that the complainant has confirmed he is not seeking to obtain the individual benefit statements withheld by the BBC under section 40(2) of the Act. Therefore, the Commissioner's investigation of the BBC's response to request 4 only relates to whether it holds other relevant correspondence between BBC People and BBC Pension Trust.

Chronology

9. The Commissioner wrote to the BBC on 8 December 2009 and requested further information and arguments to support the BBC's responses to requests 3 and 4.
10. The BBC responded on 14 January 2010 and explained that the information covered by request 3 is held on behalf of the BBC Pension Trust and not for the BBC's own purposes. It therefore argued that the requested information is not held by the BBC for the purposes of the

Act under section 3 (2)(a) of the Act. The BBC also described the steps it had taken to establish that information relating to request 4 was not held.

11. The Commissioner wrote to the BBC on 10 May 2010 and requested more specific details of the searches it had undertaken in order to establish that it does not hold information relevant to request 4.
12. The BBC responded on 25 May 2010 and explained that it had taken further steps to conduct searches for information relevant to the request and confirmed that it does not hold information relevant to request 4.

Analysis

Substantive Procedural Matters

Request 3

13. The complainant requested information about the number of people in receipt of an annual BBC pension of £100,000 or more, and asked for figures covering the previous four financial years.
14. The BBC has stated that information relating to request 3 is held on behalf of the BBC Pension Trust in order to administer the BBC pension scheme, and is not held for the BBC's own purposes. The BBC added that the BBC Pension Trust Ltd (the 'BBC Pension Trust') is not a public authority for the purposes of the Act because it is a private company and legally separate from the BBC.

Section 6 (1) – publicly-owned companies

15. Section 6 (1)(b)(ii) provides that a company is a "publicly-owned company" for the purposes of the Act if it is wholly owned by any public authority listed in Schedule 1 of the Act other than any authority which is listed only in relation to particular information.
16. Part 3 of the 'BBC Pension Scheme Governance' publication states:

"BBC Pension Trust is a wholly-owned subsidiary of the BBC and exists only for the purpose of acting as sole corporate trustee of the Scheme."

17. The Commissioner notes that the BBC is listed in Schedule 1, Part VI of the Act in respect of information held for purposes other than those of journalism, art or literature. Therefore, although the BBC Pension Trust 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 the Act because the BBC is covered by the Act only in relation to particular information. Additionally, the BBC Pension Trust is not listed in the Act as a public authority in its own right or designated as a public authority by order under section 5 of the Act.
18. In view of the above, the Commissioner concludes that BBC Pension Trust is not a public authority for the purposes of the Act.

Section 3(2) – information held by a public authority

19. Section 3(2)(a) of the Act provides that information is held by a public authority if it is held by the authority, otherwise than on behalf of another person.
20. The Commissioner interprets the phrase 'otherwise than on behalf of another person' to mean that a public authority holds information for the purposes of the Act if it is held to any extent for its own purposes. Therefore, in this case the only circumstance in which information would not be held by the BBC by virtue of section 3(2) would be where it is held only on behalf of BBC Pension Trust, and not to any extent for the BBC's own purposes.
21. In its initial response to the request, the BBC stated that information relevant to request 3 is held by the BBC on behalf of BBC Pension Trust in order to administer the BBC Pension Scheme ('the Pension Scheme'). Therefore, it considered that it was not defined as information held by a public authority.
22. The BBC has provided the Commissioner with further details of the arrangement under which it holds the requested information on behalf of BBC Pension Trust. It has explained that BBC Pension Trust exists for the sole purpose of acting as sole corporate trustee of the Pension Scheme. The size of the scheme means it is neither practical nor desirable for the Trustees to become involved in day to day decisions. Therefore the Trustees delegate many of their powers and discretions under the Trust Deed and Rules to officers of the Scheme, such as the Head of Pension and Head of Pension Investments or members of their teams.
23. The BBC has explained that BBC Pension Trust currently engages the BBC's Pension and Benefits Centre to provide day-to-day

administration of the Pension Scheme. Part 8 of the 'BBC Pension Scheme Governance' publication states:

"The Pension and Benefits Centre (the Centre) provides the personnel and resources necessary for the day-to-day administration of the Scheme. An agreement between the Trustees and the BBC sets out the terms on which the services are provided, their scope and the standards to be achieved. The Centre operates to a budget agreed with the Trustees."

24. The BBC has explained that the Pension and Benefits Centre holds information on behalf of BBC Pension Trust in order to calculate pay and benefits and to manage the scheme, and it therefore holds the information requested by the complainant. However, the information is held solely in order to provide administrative services for BBC Pension Trust and the BBC has no interest in the information for its own purposes. The Pension Trust has ultimate control of the information held by the Pension and Benefits Centre and has the sole authority to determine who has access to it. The BBC has added that, apart from the Pension and Benefits Centre, no other BBC department has access to the information held by the Pension and Benefits Centre.
25. The Pension and Benefits Centre operates to a budget agreed with the BBC Pension Trust, and in accordance with an agreement covering its scope and the standards it is expected to meet. The 'BBC Pension Scheme Governance' publication states that the Pension and Benefit Centre's services are market tested for both quality and cost on a regular basis and the BBC has explained that, if it wishes, the BBC Pension Trust could choose an alternative third party provider from the private sector to run the day-to-day administration of the Pension Scheme. If this were to happen, the relevant records would be transferred to the new provider and the BBC would not retain the information.
26. In view of the explanations provided by the BBC, the Commissioner is satisfied that the nature of the relationship between the BBC Pension Trust and the BBC Pension and Benefits Centre means that the BBC does not hold the requested information to any extent for its own purposes. The Commissioner notes that Part 1 of the 'BBC Pension Scheme Governance' publication states that it is one of the Trustees' objectives to ensure that all beneficiaries of the BBC Pension Scheme receive the benefits to which they are entitled under the Rules of the Scheme. Therefore, although the BBC Pension and Benefits Centre is engaged to provide the day-to-day administration of the Pension Scheme, the Trustees of the BBC Pension Trust retain the responsibility for ensuring that individuals receive the pension payments they are

entitled to receive. Therefore, the Commissioner accepts the BBC's explanation that the administrative and operational functions of the Pension Scheme could feasibly be delegated to a third party other than the BBC Pension and Benefits Centre.

27. The Commissioner notes that a specific element of the complainant's complaint is that the BBC had been prepared to disclose statistical information about the BBC Pension Scheme in relation to requests 1 and 2, but had then refused to respond to request 3. The BBC has explained to the Commissioner that the information provided in response to requests 1 and 2, which related to total annual pension payments and membership figures, is already in the public domain because it has been published in the 2008/09 Annual Report of the BBC Pension Trust.
28. The Commissioner is satisfied with the BBC's explanation that this information was provided to the complainant as it was information already in the public domain. The Commissioner has not investigated the BBC's response in respect of requests 1 and 2 any further as these requests were outside the scope of the complaint made to him.
29. In view of the above, the Commissioner is satisfied that the BBC does not hold information relevant to request 3 for the purposes of the Act.

Procedural Requirements

Request 4

Section 1 – general right of access to information

30. Section 1(1) states:

'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.'

31. The complainant requested correspondence between the BBC's personnel/human resources department and the BBC Pension Trust

- relating to the operation, administration, viability or financial state of the pension fund.
32. The BBC responded that its human resources department 'BBC People' does not hold any correspondence falling within the scope of the request apart from personal benefit quotations which it withheld under section 40(2) of the Act. The complainant confirmed that he was not seeking to obtain copies of individual benefit quotations. The Commissioner has therefore investigated the BBC's response that it does not hold other information falling within the scope of the request.
 33. As outlined at paragraphs 15 to 18, the Commissioner considers the BBC Pension Trust is not a public authority for the purposes of the Act. Therefore, he has only investigated whether the BBC itself holds information relevant to the request. Furthermore, the Commissioner has only investigated whether the BBC holds information falling within the specific definition of the request, which is limited to correspondence exchanged between BBC People and BBC Pension Trust.
 34. Following the complainant's request for an internal review, the BBC advised him in an email of 26 August 2009 that correspondence about the financial state of the BBC pension fund may be held in divisions other than BBC People and that therefore he may wish to submit a new request. The BBC advised the complainant that correspondence of the nature described in the request would be more likely to be exchanged between the Chair of the Pension Trustees and the BBC's Director General or Director of Finance. However, the complainant maintained that he wished to proceed with an internal review of the request as it was framed.
 35. The Commissioner notes that the BBC was not obliged to take steps to establish whether it holds relevant correspondence involving other divisions of the BBC because any such information would fall outside the scope of the request.
 36. In order to assist the Commissioner's investigation, the BBC has provided the Commissioner with further explanations of the steps it took to establish that it does not hold information falling within the scope of the request. Initially, staff in the BBC Pension and Benefits Centre advised that any correspondence about the financial state of the BBC's pension fund would not be exchanged between the BBC Pension Trust and BBC People, but would be more likely to be exchanged between the Chair of the Pension Trustees and the BBC's Director General or Director of Finance. The BBC therefore concluded that BBC People would not hold correspondence falling within the scope of the

- request. Additionally, the BBC confirmed with the Secretary to the Trustees of the BBC Pension Trust that the Trustees had not exchanged correspondence with BBC People falling within the scope of the request. The BBC has stated that it took this as an additional step for the avoidance of any doubt, despite BBC Pension Trust not itself being a public authority for the purposes of the Act and therefore any information it may have held not being covered by the Act.
37. The BBC has also explained that the freedom of information representative for BBC People confirmed that the division held no information falling within the scope of the request.
 38. In view of the BBC's description of the steps it took prior to responding that it does not hold information relevant to the request, the Commissioner requested further details of the checks and searches undertaken by the BBC. By way of example, the Commissioner asked whether the BBC's email systems had been searched using keywords relevant to the request. The BBC explained that it did not conduct specific searches of its document management systems at the time of responding to the request. This was because, having checked with staff in BBC People and the Pension and Benefits Centre, it was satisfied that no relevant correspondence would be held.
 39. However, upon receipt of the Commissioner's queries about the steps taken, the BBC subsequently conducted searches of the document management system used by both the Pension and Benefits Centre and the BBC. This system is called 'the Core'. The BBC stated that correspondence received by those departments would be scanned and recorded on the Core and the contents of the correspondence would be retrievable via a keyword search. Using the date range of 1 March 2009 to 15 July 2009, as specified by the complainant's request, the BBC searched for documents containing the terms 'operation', 'administration', 'viability' or 'financial state' of the fund. The BBC confirmed to the Commissioner that the search returned no results for correspondence between the parties specified in the request. The BBC added that, to the best of its knowledge, the requested information had not been destroyed because it had never existed.
 40. When determining whether a public authority holds any requested information, the Commissioner applies the civil standard of proof of the balance of probabilities based upon the available evidence. In deciding where the balance of probability lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority, in addition to any other reasons offered by the public authority as to why the information is not held.

41. The Commissioner considers that the BBC has conducted appropriate searches of its document management system during the course of his investigation. These are described at paragraph 40. In view of the fact that relevant staff in the BBC People division, the BBC's Pension and Benefits Centre and the BBC Pension Trust are not aware of the existence of any correspondence falling within the scope of the request, the BBC was required to tailor its searches with reference to the request itself. The Commissioner considers that the search terms used by the BBC appropriately reflect the focus of the complainant's request. However, in order to establish the information was not held the Commissioner considers that it would have been appropriate for the BBC to conduct this search when it initially handled the request rather than only as a result of the Commissioner's investigation.
42. The Commissioner has also taken into consideration the BBC's comments that correspondence about the financial state of the pension fund would be more likely to involve the Director General of the BBC or the Director of Finance. He also notes that the BBC has advised the complainant that the information he is seeking may be held by the BBC if the request was framed differently.
43. On the balance of probabilities based on the available evidence, the Commissioner is satisfied that the BBC does not hold correspondence falling within the scope of the request and that this request was handled in accordance with the Act.

The Decision

44. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

45. The Commissioner requires no steps to be taken.

Other Matters

46. The Commissioner notes that the BBC informed the complainant of the divisions and individuals it believed would be more likely to have exchanged correspondence of the nature described in the request. He considers that this represents good practice on the part of the BBC.

Right of Appeal

47. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 5th day of August 2010

Signed

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Public Authorities

Section 3(1) provides that -

"in this Act "public authority" means -

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which -

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6"

Section 3(2) provides that -

"For the purposes of this Act, information is held by a public authority if -

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."