

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

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

Decision (including any steps ordered)

1. The complainant requested information relating to a commercial relationship with Sainsbury's. Channel Four Television Corporation ("Channel 4") responded that the requested information was covered by the derogation and hence excluded from FOIA.
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 the Channel 4's position and requires no remedial steps to be taken in this case.

Request and response

3. On 24 November 2022, the complainant wrote to Channel 4 and requested information in the following terms:

"As you may also be aware, Qatar are the largest stakeholder in Sainsbury's, who sponsor your flagship programme - The Great British Bake Off - and with whom you also appear to have various commercial [sic] deals.

Please could you provide me with information regarding how much any such deals, and other advertising [sic] sales to Sainsbury's, have been worth in each year since and including 2019. Could you please also provide information regarding how much this represents as a total of your revenue in those years, and where Sainsbury's ranks in terms of companies funding Channel 4 in this way, and how much revenue from Sainsbury's represents as a percentage of your total."

4. On 8 December 2022, the complainant amended their request to include the following addition:

"Just for clarity - this request includes details of C4 deals with Nectar or other well-known Sainsbury's brands or subsidiary's. Like most people I already assumed any deals with Nectar (who are wholly owned by Sainsbury's) would already be included, but a more cynical approach might try to claim otherwise."

5. On 22 December 2022, Channel 4 responded to the request. Channel 4 explained that it did not believe that the information was caught by FOIA because it was held for the purposes of "art, journalism or literature". It therefore would not provide any information in response to the request.

Scope of the case

6. The complainant contacted the Commissioner on 22 December 2022 to complain about the way their request for information had been handled. In particular, the complainant challenged the operation of the derogation in this case.
7. The scope of this case and the following analysis is to determine whether the information requested is excluded from the FOIA because it was held for the purposes of journalism, art or literature.

Reasons for decision

8. Schedule One, Part VI of the FOIA provides that Channel 4 is a public authority for the purposes of the 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."

9. 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".
10. 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 focusses on the derogation.
11. In this case, Channel 4 is arguing that the requested information was held for the purpose of journalism. Channel 4 is a publicly owned broadcaster but it is commercially funded.
12. The scope of the derogation was considered by the Court of Appeal in the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715, and later, on appeal, by the Supreme Court (*Sugar (Deceased) v British Broadcasting Corporation* [2012] UKSC 4). The leading judgment 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.
14. In order to establish whether the information is held for a derogated purpose, the Supreme Court indicated that there should be a sufficiently direct link between at least one of the purposes for which the broadcaster holds the information (ignoring any negligible purposes) and the fulfilment of one of the derogated purposes. This is the test that the Commissioner will apply.
15. If a sufficiently direct link is established between the purposes for which Channel 4 holds the information and any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to FOIA.
16. The Supreme Court said that the Information Tribunal's definition of journalism (in *Sugar v Information Commissioner* (EA/2005/0032, 29

August 2006)) as comprising three elements, continues to be Authoritative.

"1. The first is the collecting or gathering, writing and verifying of materials for publication.

2. The second is editorial. This involves the exercise of judgement on issues such as:

* the selection, prioritisation and timing of matters for broadcast or publication,

* the analysis of, and review of individual programmes,

* the provision of context and background to such programmes.

3. The third element is the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and development of individual journalists, the mentoring of less experienced journalists by more experienced colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making."

17. However, the Supreme Court said this definition should be extended to include the act of broadcasting or publishing the relevant material. This extended definition should be adopted when applying the 'direct link test'.
18. The Supreme Court also explained that "journalism" primarily means "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the broadcaster'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 broadcaster's output and/or the broadcaster's journalistic or creative activities involved in producing such output.
19. 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.
20. The complainant has argued that the information requested is about commercial funding of Channel 4 and it does not fall under the derogation.
21. The information requested, relates directly to Channel 4 output as Channel 4 broadcasts "The Great British Bake Off" and makes editorial decisions to enhance funds it can receive from advertising during the programme. Channel 4's revenue is generated through commercial activities including advertising and sponsorship. This revenue helps to

pay for the programmes Channel 4 broadcasts and given the popularity of "The Great British Bake Off" securing these rights is enhanced by having lucrative sponsorships including the Sainsbury sponsorship.

22. Channel 4 stated that "were Channel 4 to bid for GBBO the next time the licence to broadcast the programme is up for renewal, a key consideration in relation to how much we would be prepared to pay for those rights would be the value of sponsorship agreements we were able to secure against the programme".
23. Channel 4 stated it chooses adverts appropriately because of its responsibility as a public broadcaster. It makes editorial decisions about adverts and the impact they have and any perceptions resulting from the public about the adverts.
24. The Commissioner's view is that editorial decisions about broadcasting adverts are directly linked to the output of Channel 4.
25. Additionally, the editorial decisions that Channel 4 make about its programmes is impacted by the sponsorship it can attract and the adverts it broadcasts, directly funding its output and broadcasts.
26. The Commissioner's view is that the information requested, relating to the Channel 4's decisions in relation to sponsorships deals, is information held for the purpose of 'journalism, art or literature'. This is because this information relates to the exercise of judgement on issues such as the selection, prioritisation and timing of matters for broadcast and is directly linked to Channel 4's output.
27. The Commissioner has therefore found that Channel 4 was not obliged to comply with Parts I to V of the FOIA in relation to the complainant's information request.

Right of appeal

28. 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@justice.gov.uk

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

29. 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.
30. 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

Pamela Clements
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