

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2023

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

Decision (including any steps ordered)

1. The complainant has requested a copy of an incident report. The BBC disclosed the report subject to some redactions under section 38 (health and safety) and section 31(1)(a) (law enforcement).
2. The Commissioner's decision is that the BBC is entitled to withhold the information under section 38.
3. The Commissioner does not require further steps.

Request and response

4. On 19 January 2023, the complainant wrote to the BBC and requested information in the following terms:

"Please can you provide a copy of any incident report following the Match of the Day 'porn incident' on Tuesday this week."

5. The BBC responded on 10 February 2023. It stated that the requested information was withheld under section 38.

6. Following an internal review, the BBC wrote to the complainant on 11 April 2023. It disclosed some information, but maintained the application of section 38 to the remainder. It also sought to rely upon the exemption provided by section 31(1)(a) for the same information.
7. The BBC disclosed further information to the complainant on 26 May 2023, but maintained the application of the exemptions to the remainder.

Reasons for decision

8. This reasoning focusses on the BBC's application of section 38(1) of FOIA.
9. Under section 38(1) information is exempt information if its disclosure would or would be likely to a) endanger the physical or mental health of any individual or b) endanger the safety of any individual.
10. In its submissions to the Commissioner the BBC has explained that the withheld information relates to a security breach. The information contains specific detail about how the breach occurred (including the original security arrangements), and recommendations for changes to security arrangements.
11. The BBC argues that as a large public organisation, the disclosure of this information would likely facilitate threats from nefarious actors through revealing strengths and weaknesses of the BBC's (and third party), security systems at broadcasting facilities and events venues. Whilst the information contains recommendations on how to prevent such an event occurring again, the BBC argues that such recommendations may not have been applied to all venues.
12. The complainant has argued that there is no obvious risk to the safety and security of any individual from a one-off event in which no known harm was inflicted or intended. The complainant also argues that the information is retrospective, and the likelihood of any similar event has been resolved. The complainant has also referred the Commissioner to his decision in decision notice IC-80826-S5D4¹, where the Commissioner required the BBC to disclose parts of a 'security review' that had been withheld under section 31 of FOIA.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/4017842/ic-80826-s5d4.pdf>

13. The Commissioner has reviewed the withheld information. Having done so, he is satisfied that there would be a causal link between disclosing the information and endangerment to individuals' health and safety, for the reasons the BBC has given. Furthermore, the Commissioner is satisfied that the likelihood of this occurring is one that is more than hypothetical. Whilst the Commissioner has noted the decision notice cited by the complainant, he does not consider that it has material impact on the decision in this case. This is because, in the circumstances of that decision, the BBC had sought to apply an exemption to an entire document and had not considered the content and sensitivity of information within it. In this case, the Commissioner is satisfied that BBC has done so, and further, has provided compelling arguments for that information it considers to fall under the exemption.
14. The Commissioner has decided that the BBC is entitled to withhold the information under section 38(1) of FOIA as disclosure would be likely to endanger individuals' health or safety. He has gone on to consider the associated public interest test.
15. The Commissioner has found that disclosing the requested information would be likely to endanger individuals' health or safety. The public interest in disclosure would have to be extraordinarily great to justify endangering anyone's health or safety. Whilst the Commissioner recognises the general public interest in transparency and openness, he is satisfied that the high public interest threshold for disclosure is not met in this case. The Commissioner considers that whilst there is a public interest in the BBC confirming to the public that the incident had been investigated and appropriate steps recommended to rectify issues, this has been achieved through its confirmation that the information is held, and the disclosure of the incident report in redacted form.
16. Because the Commissioner has found that the information is exempt under section 38(1) of FOIA, it has not been necessary to consider the BBC's application of section 31(1)(a).

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.

Signed

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