

Freedom of Information Act e2000 (FOIA)

Decision notice

Date: 27 July 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to Creative Industries Independent Standards Authority (CIISA). Channel Four Television Corporation ('Channel 4') withheld the requested information, citing section 36 (prejudice to the effective conduct of public affairs) of FOIA.
2. The Commissioner has decided that section 36 is engaged and the public interest lies in maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. On 3 March 2023 the complainant requested:
"Please forward to me all minutes, readouts, recordings, transcripts – whatever is the most detailed - of all meetings in which Channel 4 took part, regarding the new regulator for the creative industries."
5. On 28 March 2023 Channel 4 responded and asked for clarification in relation to the request. On the same day the complainant clarified that:
"My request relates to what is now called the Creative Industries Independent Standards Authority (CIISA), previously was called the

- ISA and before then may have had another name or no name. My request therefore relates to this entity, and all of the processes leading to its creation, no matter what it was called during Channel 4's involvement with it. Its creation was an initiative supported and funded by, amongst others, Channel 4, as reported here and elsewhere: U.K. Broadcasters Back Industry Efforts to Curb Bullying - Variety"
6. Channel 4 responded on 27 April 2023. It confirmed that information was held in response to the request but was exempt under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the Act (prejudice to the effective conduct of public affairs).
 7. Following an internal review Channel 4 wrote to the complainant on 30 May 2023, upholding its previous position.
 8. The Commissioner understands that the idea for the CIISA was conceived in 2017, in the wake of the MeToo movement and the allegations against film producer Harvey Weinstein. It stands for the Creative Industries Independent Standards Authority; it's a new regulatory body whose aim is to create better workplace culture across the creative industries, to investigate complaints and ensure that anyone who has suffered bullying or harassment can receive confidential advice and mediation. The CIISA was originally developed with the film, tv and music industries in mind but recently the UK's leading broadcasters BBC, Channel 4, Channel 5, ITV, and Sky have all committed financial support to the CIISA whose remit has expanded to include theatre, fashion and advertising.

Reasons for decision

Section 36 – prejudice to the effective conduct of public affairs

9. Section 36(2) of FOIA states that:
 - "Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act –
 - (b) would, or would be likely to inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

10. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person ('QP') for that public authority. The QP's opinion must also be a 'reasonable' opinion, and if the Commissioner decides that the opinion is an unreasonable one, he may find that the section 36 exemption has been applied inappropriately.
11. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the QP for the exemption to be applied appropriately. Furthermore, the opinion does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion. The Commissioner only needs to satisfy himself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.
12. Section 36 is a qualified exemption, other than for information held by Parliament. This means that even if the Commissioner finds that the exemption has been applied properly, the public authority must still disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Who is the qualified person and how was their opinion sought?

13. The Commissioner has seen a copy of the submission that was provided to the QP, Martin Baker, Director of Commercial Affairs, on 25 April 2023. In order for the QP to form a reasonable opinion they were provided with supporting arguments of the section 36 exemption and a recommendation to consider the exemption engaged. The Commissioner notes that the QP wasn't provided with any counter arguments in favour of disclosure or a copy of the withheld information, however it was described within the submission. The QP gave their opinion on 26 April 2023, engaging section 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) on the lower threshold of prejudice, would be likely to.

Is the qualified person's opinion reasonable?

14. The qualified person in relation to the exemption at section 36(2)(c) must give an opinion that the release of the requested information would or would be likely to prejudice the effective conduct of public affairs.
15. To reiterate, the Commissioner acknowledges that in order to conduct public affairs effectively, members of staff within a public authority must be allowed to exchange views for the purposes of deliberation freely and frankly and therefore there is to be some overlap in the arguments in support of both 36(2)(b)(i) and 36(2)(b)(ii). However, since section 36(2)(c) relates to the 'otherwise prejudice' of the effective conduct of public affairs – this prejudice must be separate and distinct to that of section 36(2)(b)(i) and 36(2)(b)(ii).

16. The arguments provided to the QP in relation to section 36(2)(c) were:
- Disclosure of this information would be likely to (otherwise) prejudice the effective conduct of public affairs. As the CIISA is not fully operational discussions around its remit can still be considered a 'live' issue and Channel 4 requires a safe space away from public scrutiny in which to determine how best to collaborate with the CIISA.
 - There is a risk that disclosure of this information may set a precedent that discourages other cross body organisations and industry wide initiatives from inviting the Public Service Broadcasters who are subject to the Act to participate or participate fully in future industry-wide initiatives if there was a threat that any information shared with them could be made public.
17. The safe space argument is just a repetition of the arguments presented to the QP in relation to section 36(2)(b)(i) and 36(2)(b)(ii). Therefore, the Commissioner rejects them in relation to section 36(2)(c).
18. Channel 4 has also explained that disclosure would mean 'The CIISA would not be party to the valuable lessons learnt by the publicly owned broadcasters and potentially, the systems and measures they set up may not be as suitable for use by individuals experiencing issues at publicly owned broadcasters as those at privately owned rivals;' this argument is separate and distinct to those explored in 36(2)(b)(i) and (ii). Whilst the Commissioner disagrees that disclosure would set a precedent, as each request received under FOIA must be considered on a case-by-case basis, he acknowledges that certain stakeholders of the CIISA are subject to FOIA and others are not.
19. The Commissioner is satisfied that the opinion the QP holds, in relation to 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) is reasonable. It discusses the safe space that Channel 4 staff would lose if the requested information was disclosed and the chilling effect on future discussions, both internally and externally, relating to CIISA and the effect this would have on the CIISA's robustness.
20. Since the Commissioner considers the exemptions engaged, he'll go onto consider whether the public interest lies in disclosure or in maintaining the exemption.

The public interest test

Arguments in favour of maintaining the exemption

21. Channel 4 is concerned that 'The request covers a crucial moment in the history of the CIISA – its formation; this is the period over which discussions are taking place to shape the purpose and remit of the organisation. Discussions around the CIISA including for example; how it will work in parallel with existing HR and legal facilities aimed at tackling behavioural issues in the industry are very much still live. At time of writing (its submission in relation to the Commissioner's investigation), for example, the CIISA does not yet have a fully functioning website.¹'
22. Channel 4 is concerned that 'managing the impact of disclosure of the requested information at this present time would likely result in the diversion of the CIISA's resources, which are currently focused on getting the new standards authority off the ground. This would likely include the diversion of resources away from, for example: scoping out future complaint handling/resolution processes, the creation of resources to support complainants and/or a delay in introducing advisory resources for organisations hoping to improve the safety of their workplaces. In turn, this could result in a delay to the availability of such provisions and resources, which could impact individuals wishing to raise concerns as well as allowing those exhibiting poor workplace behaviours to further prolong such behaviour without appropriate or effective intervention.'

Arguments in favour of disclosure

23. Channel 4 has acknowledged 'there is a general public interest in providing access to information that would facilitate the accountability and transparency of public authorities.
24. It also acknowledged the specific interest in the requested information 'given that it relates to Channel 4's collaboration with a new organisation intending to tackle the issue of bullying and harassment in the creative industries. Issues of bullying and harassment and poor behaviour in the industry have been the topic of a great deal of media attention and debate. We recognise that there is a public interest in understanding

¹ <https://ciisa.org.uk/>

how the industry intends to address such issues, including the robustness of their processes and procedures.'

25. The complainant is concerned that, since Channel 4 has contributed to the funding of the CIISA, the CIISA will be unable to regulate or investigate concerns about Channel 4 fairly.
26. The complainant has also provided evidence of tweets from an individual involved in the roundtable discussions supporting the development of the CIISA. These tweets discuss an individual's own experience of harassment in their industry and their negative experience with the Police. The complainant has expressed concern that 'it is in the public interest for us to understand if a government-owned entity funded an anti-abuse body formulated by abusers.'
27. The complainant is also concerned that 'If the CIISA starts from the position that men are 'oppressors' or 'privileged', as intersectionalists generally believe, how fair and equal a hearing can men expect from them if they are falsely accused or themselves bring a case against a female perpetrator?'

Balance of the public interest

28. The Commissioner agrees with Channel 4 when it says 'there is an overwhelming public interest in ensuring that candid discussions can take place and therefore lessons learned as to what the industry has done well and/or badly in terms of tackling behavioural issues previously. We consider that protecting the safe space necessary for these discussions is vitally important in ensuring that the new procedures are formed in such a way as to enable the greatest chance of their success in better tackling such issues in future.'
29. To address the complainant's concerns at paragraph 28 - 30; there is no evidence of wrongdoing or bias which would increase the public interest in disclosure. The complainant appears to be accusing the CIISA of bias in the way that it treats complaints received about Channel 4, or men, however, the CIISA isn't even operational yet. In order to be operational and effective, regulators must be funded and it makes sense for the largest organisations within the creative industry to support this incentive. However, there is no evidence that the CIISA will conduct biased investigations towards Channel 4 or women.
30. It's also not the Commissioner's role to comment on an individual's suitability to inform or develop new regulatory bodies. However, in the Commissioner's opinion, the tweets with which the complainant is concerned only supports the need for the CIISA and the public interest in ensuring the safe space needed to develop it isn't compromised in any way.

Right of appeal

31. 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

32. 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.
33. 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
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