

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2023

Public Authority: British Broadcasting Corporation ("the BBC")

Address: BBC Broadcasting House

Portland Place

London

W1A 1AA

Decision (including any steps ordered)

1. The complainant requested information from the BBC about BBC Writer's Room North East Voices. The BBC responded that the requested information was covered by the derogation and hence excluded from FOIA.
2. The Commissioner's decision is that this information, if held at all, is held by the BBC for the purposes of journalism, art or literature and so was not covered by FOIA. He therefore upholds the BBC's position and requires no steps to be taken in this case.

Request and response

3. On 21 June 2023 the complainant wrote to the BBC and requested information in the following terms:

"I would like documents and correspondence concerning the selection of participants of BBC Writer's Room North East Voices which was announced on the 21st September 2021 on Twitter and subsequent reaction to this on social media, including any final reports if any was produced. The period of time I am interested in cover the period of Sept-Nov 2021."

4. On 13 July 2023 the BBC responded to the request. The BBC 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".

5. It therefore would not provide any information in response to the requests.

Scope of the case

6. The complainant contacted the Commissioner on 31 July 2023 to complain about the way their request for information had been handled. In particular, they 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 FOIA because it was held for the purposes of "journalism, art or literature".

Reasons for decision

8. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held.
9. FOIA only applies to the BBC to a limited extent. Schedule One, Part VI of FOIA provides that the BBC is a public authority for the purposes of FOIA but it only has to deal with requests for information in some circumstances. The entry relating to the BBC states:

"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature."
10. This is known as the "derogation". This means that information that the BBC holds for the purposes of journalism, art or literature - in broad terms, its output or related to its output - is not covered by FOIA. If information falls within the derogation, then that is the end of the matter; there is no public interest test or similar provision to consider the merits of disclosure.
11. Certain information that the BBC may hold is derogated because, although it is publicly funded through the licence fee, the BBC commercially competes with other broadcasters who are not subject to FOIA. Releasing information about its output, or related to its output, could therefore commercially disadvantage the BBC.
12. Broadly, BBC information that is covered by FOIA includes information about: how the BBC is managed and run, including the TV licence; the

BBC's employees and its human resources practices; and the BBC's performance.

13. BBC information that is not covered by FOIA includes the following: information about the BBC's on-screen or on-air "talent" including its presenters and journalists; information about BBC programmes including any spend or editorial decisions associated with its programming; materials that support the BBC's output, such as the script of a television programme or a source drawn on for an investigation; and viewer and listener complaints to the BBC about the above.
14. The derogation as it applies to the BBC is discussed in more detail in numerous published decisions made by the Commissioner, such that he does not consider it necessary to reproduce that detail again here. However, key to the derogation is the Supreme Court decision in *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC 4¹
15. The Supreme Court explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC'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 BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.
16. The Commissioner adopts a similar definition for the other elements of the derogation, in that the information must be used in the production, editorial management and maintenance of standards of those art forms.
17. The complainant argued that it "it is in short a training scheme and therefore is not covered by the exemption." They also argued that "there is nothing in that FOI request concerning what ideas, if any, participants were submitting to the scheme and who they are" and that the part of their request relating to reports in reaction to social media posts, if produced, "has nothing to do with journalism, art or literature but internal policy within the BBC when it comes to representation of ethnic diversity and whether any lessons were learned from the public backlash that erupted from posting the original tweet." They finally argue that "this cannot apply to the management, selection criteria of participants and fall out from running a training scheme."

¹ <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

18. Information about the composition of participants of BBC Writers Room would be used by the editors of it to ensure that the selection and balance of it reflected the output objectives of the platform.
19. Therefore, the information requested is also held for the purposes of enabling producers to assess the success, or otherwise, of BBC Writers Room in nurturing and developing talent that drives BBC programming output. To enable this success to be judged, the information is necessary for the editor to use to inform allocation decisions about future talent and supporting their development.
20. Any reactions to BBC Writers Room on social media is information held for the purposes of assessing compliance against the BBC's Editorial Guidelines and responding to editorial complaints. These activities are undertaken as part of the process of reviewing and enhancing the standards and quality of the BBC's output.
21. As explained above, this information would be associated with the BBC's output because any reports and correspondence on this subject would be held for the purposes of editorial matters. A review of this information relates to editorial decisions about programming, and the enhancement of the standards and quality of journalism. This would likely be related to the BBC's output if held at all.
22. The Commissioner is satisfied, based on the very well established precedent set in the numerous other decisions he has made in cases involving the BBC, that, if held at all, the information requested by the complainant would be held for the purposes of journalism, art or literature.
23. The Commissioner finding is, therefore, that the BBC was not obliged to comply with the complainant's information requests.

Right of appeal

24. 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

25. 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.
26. 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

Michael Lea
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