

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

Public Authority: British Film Institute
Address: 21 Stephen Street
London
W1T 1LN

Decision (including any steps ordered)

1. The complainant has requested information relating to film certification. The British Film Industry (BFI) provided some of the information falling within the scope of the request but withheld the remainder of the information citing section 41(1) of FOIA (information provided in confidence).
2. The Commissioner's decision is that BFI has failed to demonstrate that disclosure of the information would constitute an actionable breach of confidence under section 41(1) of FOIA, and therefore, it is not entitled to rely on this exemption.
3. The Commissioner requires BFI to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information or issue a fresh response that does not rely on section 41 of FOIA.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 July 2023, the complainant wrote to BFI and requested information in the following terms:

"I understand that the BFI voluntarily complies with FOIA principles in respect of activities which are of a public nature, which overseeing and publishing data on certifications clearly is. So I would like the following five points considered as individual FOI requests:

* did any of the films listed below receive interim certificates?

* if so, which films?

* did any of the films apply for final certificates?

* if so, which films?

* what was the outcome of any final applications for the listed films?

I think it is important to provide this information in full as the listed films have claimed tens of millions in tax payer funded tax credits."

6. The public authority responded on 14 September 2023. It provided some information relating to those productions which had received final certification based on the list provided in the annex to this notice. BFI also confirmed that it does not publish information on projects that may have applied for interim certification and neither does it comment on whether it has received applications for projects for interim certification.
7. Following an internal review on 24 November 2023 BFI maintained its original position to withhold the information, citing section 41 of FOIA as its basis for doing so.

Scope of the case

8. The complainant contacted the Commissioner on 3 August 2023 raising concerns about BFI's failure to respond to their information request.
9. On 8 August 2023 the Commissioner wrote to BFI forwarding a copy of the complainant's information request and required BFI to provide its substantive response within ten working days or confirm that a response had already been provided. BFI informed the Commissioner that it did not receive the complainant's information request nor the chain of emails that was enclosed to it and requested 20 working days to provide its response. Despite the Commissioner's intervention BFI failed to

provide a response and the Commissioner issued a decision notice on 12 September 2023 finding BFI in breach of section 10(1) of FOIA.

10. The Commissioner considers that the scope of his investigation is to determine whether BFI have correctly applied section 41(1) of FOIA to withhold the requested information.

Reasons for decision

Section 41- information provided in confidence

11. Section 41(1) of FOIA states that:

'(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

12. Therefore, for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.

13. BFI explained that on its applications for funding or certification it is stated:

"The Freedom of Information Act 2000 gives members of the public the right to receive information held by the BFI, subject to a number of exemptions. This includes information held in relation to applications received by the BFI. If you choose to apply to the BFI you should be aware that the information you supply, either in whole or in part, may be disclosed under the Act".

14. It says that this does not mean every aspect of an application would always be disclosed as this would depend on the information requested and at what part of the process the request was received.

Did BFI obtain the information from another person?

15. In its submissions, BFI confirmed that an application for interim certification for each of the projects which the complainant has identified in their request for information, would have been submitted by the applicant organisation. BFI maintains that it does not publish or provide the names of projects when applications are granted interim certification

because it considers the information to be commercially sensitive. It argues that at the time when applicants apply for and receive interim certification, they would not have announced it to the industry or to the market and therefore knowledge of a title could be compromised with regard to potential alternative rival projects. As such the condition under section 41(1)(a) has been met.

Would disclosure constitute a breach of confidence actionable by that person or any person?

16. In considering whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
 - whether the information had the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and,
 - whether an unauthorised use of the information would result in detriment to the confider.
17. Information will possess the necessary quality of confidence if it is more than trivial and not otherwise accessible. The information should be worthy of protection in the sense that someone has a genuine interest in the contents remaining confidential. The preservation of confidences is recognised by the courts to be an important matter and one in which there is a strong public interest. If the information is more than trivial then the authority must go on to consider whether the information is otherwise accessible. Information that is already in the public domain will not possess the necessary quality of confidence.
18. The Commissioner notes that the titles for the various productions provided by the complainant in their original information request seem to be already in the public domain. In the complainant's request they provided a list of productions along with links to the location where the information was obtained. These links are mostly from the IMDB Services and/or Companies House, which are online and publicly accessible. Therefore, the Commissioner is not convinced that BFI has adequately demonstrated that the necessary quality of confidence criteria has been met.
19. The Commissioner does not consider that BFI has provided submissions surrounding the circumstances importing an obligation of confidence. Whilst he considers that the application submitted for interim certification may be confidential, he has not received adequate explanation to justify why confirming that a production has received

interim certification is confidential given that the title which BFI purports to protect is already publicly available. BFI has not provided any submission demonstrating any implicit conditions attached to the circumstances of the application that imports an obligation of confidence.

20. BFI has informed the Commissioner that disclosure of the information would be detrimental in that knowledge of the title could be compromised due to potential alternative rival projects. Although the Commissioner accepts this argument, he is not convinced that this would affect productions whose titles are already publicly accessible.
21. While the Commissioner accepts that the application for interim certification and its content will likely contain information that is confidential, he has given particular weight to the complainant's original request where they require BFI to confirm which productions received interim certification. With this in mind the Commissioner does not consider that BFI has demonstrated that confirming that a production has an interim certification would constitute an actionable breach of confidence under section 41(1) of FOIA.
22. The Commissioner finds that whilst the condition under section 41(1)(a) has been met the condition under 41(1)(b) of FOIA has not.

Right of appeal

23. 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

24. 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.
25. 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

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

Annex

26. The request interim and final certification was submitted for the following productions:

A Bird Flew In - £1.95m / www.imdb.com/title/tt12543464 / Alone Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/12626477/filing-history>

Assailant - £5.6m / www.imdb.com/title/tt14469194 / Assailant Film Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/13110061/filing-history>

Await Further Instructions - £4.2m / www.imdb.com/title/tt4971408 / Further Instructions Ltd <https://beta.companieshouse.gov.uk/company/07606233/filing-history>

A Week in Paradise - £7.1m / www.imdb.com/title/tt14799960 / TWP Film Productions <https://find-and-update.company-information.service.gov.uk/company/13110055/filing-history>

The Bet - £4.2m / www.imdb.com/title/tt7311770 / Love of My Life Productions Ltd <https://beta.companieshouse.gov.uk/company/08862831/filing-history>

Black Ops aka The Ascent / Stairs - £1m / www.imdb.com/title/tt8439934 / Mosley Productions Ltd/ <https://beta.companieshouse.gov.uk/company/11315985/filing-history>

Bliss! - £4.3m / www.imdb.com/title/tt1316541 / Bliss Films Ltd <https://beta.companieshouse.gov.uk/company/07362809/filing-history>

Christmas in the Caribbean - £tbc / <https://www.imdb.com/title/tt15771958> / CG Film Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/13447229/filing-history>

City Girls - £5.6m / no imdb listing / City Girls Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/12781931/filing-history>

Dark Encounter - £6.4m / www.imdb.com/title/tt8269120 / Encounter Productions Ltd / <https://beta.companieshouse.gov.uk/company/11031269/filing-history>

Deadweight - £ 980k / no imdb listing / DW Film Ltd <https://find-and-update.company-information.service.gov.uk/company/12366116/filing-history>

Deus - £7.8m / www.imdb.com/title/tt8980128 / Deus Productions Ltd <https://beta.companieshouse.gov.uk/company/11256656/filing-history>

Dusty & Me - £4.4m / www.imdb.com/title/tt4125372 / Keep Your Trap Shut Ltd <https://beta.companieshouse.gov.uk/company/08942388/filing-history>

End of Term - £5m (filmed in 2017. never released) / www.imdb.com/title/tt6044276 / End of Term Ltd <https://beta.companieshouse.gov.uk/company/10009211/filing-history>

Christmas in Paradise fka First Christmas - £ 1.5m / <https://www.imdb.com/title/tt22309256> / V Film Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/12698833/filing-history>

For Love or Money - £4.3m / www.imdb.com/title/tt7051624 Family Dies Ltd <https://beta.companieshouse.gov.uk/company/07094900/filing-history>

Gatecrash - £4.5m / www.imdb.com/title/tt7358576 / Gatecrash Film Ltd <https://beta.companieshouse.gov.uk/company/10078780/filing-history>

In Extremis - £5.2m / www.imdb.com/title/tt4081012 / Extremis Production Ltd <https://beta.companieshouse.gov.uk/company/08789030/filing-history>

The Intergalactic Adventures of Max Cloud & G-Loc - £12.4m / <https://www.imdb.com/title/tt9812258> + www.imdb.com/title/tt9472532 / GSP Science Fiction Ltd

Killer's Anonymous - £ 5.2m / www.imdb.com/title/tt8400758 / KA Film Ltd <https://find-and-update.company-information.service.gov.uk/company/11120322/filing-history>

Langtray & Gray - £1.6m / no listing / L and G Film Productions Limited <https://find-and-update.company-information.service.gov.uk/company/12048694/filing-history>

Macbeth - £6.9m / www.imdb.com/title/tt4717422 / GSP Macbeth Ltd <https://beta.companieshouse.gov.uk/company/08873613/filing-history>

Miss Willoughby series - £11.5m - Haunted Bookshop www.imdb.com/title/tt12825632 released, The Treasure of

Admiral Barbaros www.imdb.com/title/tt13863936 seems abandoned /
Miss W Productions Ltd

Mister Mayfair series (Mister Mayfair, Shooting Paul, A Song to Kill For,
Serena's Game) - £22.1m
/ www.imdb.com/title/tt9788418, www.imdb.com/title/tt11100914, www.imdb.com/title/tt10342336, www.imdb.com/title/tt12361036

Mister Mayfair, Shooting Paul, A Song to Kill For - Mister M Productions
Ltd [https://beta.companieshouse.gov.uk/company/10741038/filing-
history](https://beta.companieshouse.gov.uk/company/10741038/filing-history), £17.4m Last Accounts: December 2020, Debts: £ 17.4m

Serena's Game - The Club Productions Ltd [https://find-and-
update.company-information.service.gov.uk/company/10740931/filing-
history](https://find-and-update.company-information.service.gov.uk/company/10740931/filing-history), £4.7m

Natalya - £2.2m / No listing / Natalya Film Productions Ltd [https://find-
and-update.company-
information.service.gov.uk/company/12038801/filing-history](https://find-and-update.company-information.service.gov.uk/company/12038801/filing-history)

Ocean Deep - £ tbc / www.imdb.com/title/tt21832714 / MWC Film
Productions Ltd [https://find-and-update.company-
information.service.gov.uk/company/13446991/filing-history](https://find-and-update.company-information.service.gov.uk/company/13446991/filing-history)

One Year Off - £ 5.9m / www.imdb.com/title/tt14130940 / QOC
Productions Ltd [https://find-and-update.company-
information.service.gov.uk/company/13110191/filing-history](https://find-and-update.company-information.service.gov.uk/company/13110191/filing-history)

Quant - £978k / www.imdb.com/title/tt11317578 / MQD Film Ltd
[https://find-and-update.company-
information.service.gov.uk/company/12334552/filing-history](https://find-and-update.company-information.service.gov.uk/company/12334552/filing-history)

Reassigned - £tbc / unknown / Reassigned Films Ltd [https://find-and-
update.company-information.service.gov.uk/company/13638858/filing-
history](https://find-and-update.company-information.service.gov.uk/company/13638858/filing-history)

Ronnie's - £1.2m / www.imdb.com/title/tt9229144 / RSD Film Limited
[https://find-and-update.company-
information.service.gov.uk/company/11839206/filing-history](https://find-and-update.company-information.service.gov.uk/company/11839206/filing-history)

Solis - £4.7m / www.imdb.com/title/tt6134274 / Solis Film Ltd
<https://beta.companieshouse.gov.uk/company/10087882/filing-history>

Sometimes, Always, Never - £4.7m / www.imdb.com/title/tt5068162 /
Triple Word Score Ltd
<https://beta.companieshouse.gov.uk/company/08398167/filing-history>

That Good Night - £ 4.6m <https://www.imdb.com/title/tt5271794> That
Good Night Limited <https://find-and-update.company-information.service.gov.uk/company/08862901/filing-history>

Waiting for Anya - £10.9m / www.imdb.com/title/tt7095476 / Waiting
For Anya Ltd <https://find-and-update.company-information.service.gov.uk/company/10087978/filing-history>

York Witches Society - £6.5m / www.imdb.com/title/tt14772558 /
Horror Film Productions Ltd <https://find-and-update.company-information.service.gov.uk/company/13110084/filing-history>