

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 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 Institute (BFI) has refused to provide the information citing section 44(1)(a) (prohibitions on disclosure) of FOIA as its basis for doing so.
2. The Commissioner's decision is that BFI has failed to demonstrate that section 44(1)(a) is engaged.
3. The Commissioner requires BFI to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
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.

Background to the case

1. 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 taxpayer funded tax credits."

2. BFI provided a response on 14 September 2023 stating that it does not publish information on projects that may have applied for interim certification. It also stated that it cannot comment on whether it has received applications for interim certification for projects. During an internal review on 24 November 2023, it maintained its position to withhold the information, citing section 41 of FOIA.
3. Following a complaint to the Commissioner, on 16 April 2024 the Commissioner issued a decision notice reference IC-272572-G4S0. The Commissioner decided that BFI had failed to demonstrate that disclosure of the information would constitute an actionable breach of confidence under section 41 of FOIA and hence it was not entitled to rely on the exemption. The Commissioner's ordered steps required BFI to disclose the information or issue a fresh response that did not rely on section 41 of FOIA.
4. BFI issued a fresh response on 7 June 2024 in which it relied on section 44(1)(a) of FOIA to withhold the requested information. The response of 7 June 2024 forms the basis for the Commissioner's current decision.

Scope of the case

5. The Commissioner considers that the scope of his investigation is to determine whether BFI was correct to rely on section 44(1)(a) of FOIA to refuse to provide the requested information.

Reasons for decision

Section 44-prohibitions on disclosure

6. Section 44 of the FOIA states that:

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) Is prohibited by or under any enactment'.

7. Section 44(1)(a) provides an exemption to disclosure to requests made under the FOIA, where disclosing the information is prohibited by other legislation.

8. Section 44 of FOIA is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.

9. The relevant legislation cited by BFI is the Commissioner's for Revenue and Customs Act 2005 (CRCA). In particular, BFI has relied on section 18 and 19 of CRCA as the statutory bar preventing disclosure.

10. Section 18 and 19 of CRCA states that:

18 Confidentiality-

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

19 Wrongful disclosure-

(1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it.

(2) In subsection (1) "revenue and customs information relating to a person" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal

administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).

11. BFI stated that following discussions with His Majesty's Revenue and Customs (HMRC) it noted that they relied on section 44 exemption to withhold the same information when asked by a different requestor.
12. BFI states that it has been delegated authority to issue interim (and final certificates) by Government and the certificates themselves are signed by the Department for Culture, Media and Sport (DCMS). It argued that by issuing interim certificates for use to apply to HMRC for tax relief, means it is effectively standing in the shoes of HMRC in exercising that function.
13. The Commissioner has noted that section 5 of CRCA provides that HMRC's function include "the collection and management of revenue". He also notes that section 6(2) provides a list of persons on whom those functions are conferred by CRCA. The Commissioner does not consider BFI to be an officer for excise and customs.
14. While he has noted the argument presented by BFI, there is no evidence before the Commissioner that a function conferred by the CRCA is the issuance of interim certificates for projects or productions. Although he concedes that included in HMRC's function to collect and manage revenue, is the consideration of applications for tax relief submitted by those productions after interim certificates have been issued by BFI.
15. The Commissioner is not convinced by BFI's arguments to rely on section 18 and 19 of CRCA and section 44 of FOIA to withhold the information in question. The Commissioner has seen the withheld information, and he does not consider that disclosure of that information is prohibited by section 19 of CRCA.
16. The Commissioner does not accept, in this case, that issuing interim certificates is a function governed by the provisions of CRCA and therefore considers that the exemption under section 44(1)(a) of FOIA is not engaged.

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.

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