

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 August 2024

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the BBC correctly applied section 12(1) of FOIA to three of the complainant's requests about the Media Café. This is because it would exceed the appropriate cost limit to comply with each of these requests. In respect of the three requests, there was no breach of section 16(1) which concerns advice and assistance.
2. It's not necessary for the BBC to take any corrective steps.

Request and response

3. The complainant has complained to the Commissioner about the following information requests they submitted to the BBC:

Request 1, BBC reference RFI20231294 – submitted 3 October 2023

"Please provide details of

1) arrangements for general public access to the Media Cafe in New Broadcasting House, London

2) a copy of the current Public Space Management Plan as agreed by deed between the BBC and Westminster City Council

- 3) Copies of written correspondence received by the BBC from, or sent by the BBC to Westminster City Council since 2015 on the subject of general public access to the Media Cafe in New Broadcasting House, or relating to the Public Space Management Plan.”
4. On 30 October 2023, the BBC responded to the request. It addressed parts 1 and 2 and relied on section 12(1) of FOIA to refuse part 3. The complainant requested an internal review on 3 November 2023 in respect of part 3 and the BBC provided one on 4 December 2023, maintaining its position. It had advised how part 3 might be refined.

Request 2, BBC reference RFI20231456 - submitted 3 November 2023

- “Please provide copies of all emails sent between the BBC and Westminster City Council over the past eight years.”
5. The BBC provided a response to this request on 24 November 2023. It relied on section 12(1) to refuse the request and offered advice and assistance. The complainant requested an internal review on 24 November 2023 and the BBC provided one on 21 December 2023, maintaining its reliance on section 12(1) of FOIA. The BBC again provided advice and assistance as to how this request might be refined.
6. However, in the interim, the complainant submitted a third request, as follows:

Request 3, BBC reference RFI20231639 – submitted 21 December 2023

- “Following your earlier refusals, I have made my request extremely simple to execute all copies of emails currently stored in live (not archive) central mailboxes that were sent to or received from the email domain “westminster.gov.uk”.
7. On 16 January 2024 the BBC refused this request under section 12(1) of FOIA and indicated how the request might be refined. The complainant requested an internal review on 16 January 2024 and the BBC provided one on 12 March 2024. It maintained its position but said it was still considering if there was [further] advice and assistance it could offer. The Commissioner understands that the BBC went on to offer [further] advice and assistance in correspondence to the complainant dated 1 May 2024.

Request 4, BBC reference RFI20240059 – submitted 17 January 2024

“Please provide a list of all “departments, teams or individuals” in the BBC - for individuals, job titles will suffice.”

8. The BBC responded to this request on 14 February 2024. It provided a list of job titles “in their associated job families.” The complainant requested an internal review on 18 February 2024 because the BBC hadn’t provided information about departments or teams.
9. The BBC provided an internal review on 16 April 2024, the BBC noted that the request was for “departments, teams or individuals. It acknowledged that it hadn’t referred to them as departments or teams in our response and explained that it had used the terminology of “job families” because that’s the term the BBC uses to describe departments or teams.

Scope of investigation

10. The complainant submitted a complaint to the Commissioner on 11 April 2024.
11. In this case there are different, but related, requests, responses and internal reviews – more than are recorded here. As such, it’s somewhat complex keeping track of the complainant’s and BBC’s correspondence, and the nature of the concerns the complainant has brought to the Commissioner. However, from their complaint to him the Commissioner understands that the complainant’s concerns can be summarised as follows:
 - **Request 1** – the BBC relied on section 12 but didn’t explain how it had concluded that it would exceed the cost limit to comply with the third part of this request.
 - At internal review, the BBC had suggested how they could refine the request - that it be restricted to email, to three years, and that request could be restricted to a particular office or position. The complainant considers that these refinements were unnecessary or unreasonable; the BBC hadn’t suggested which teams or positions would be relevant and, in relation to keywords, hadn’t provided guidance on likely words, terms or project names.
 - **Request 2** – the complainant considers that this request could be answered by a “simple programmatic search” across the Microsoft Exchange Servers that the BBC uses, for all emails sent to or from a 'westminster.gov.uk' email address.

- **Request 3** – the complainant considers that this request can be done via a central search on the BBC's Microsoft Exchange email servers. They consider that it wouldn't involve individual staff, and because it's a programmatic search it doesn't need staff time to review whether the subject matter matches the request.
 - **Request 4** – at the point they submitted their complaint to the Commissioner, the complainant noted that they hadn't received an internal review.
 - **General concerns** – the complainant considers that the IT system the BBC uses has search tools that permit a wide number of mailboxes to be searched, though for older versions, this is limited to 10,000 mailboxes per search. The complainant considers that this is still only around four searches "to start" if it's assumed the BBC has 40,000 email accounts. They say that each search takes very little staff time to start going, and to retrieve the results when completed.
 - The BBC had also suggested to the complainant that it could locate emails via keywords if they amended their request to include these. The complainant considers that this would be an additional step: for a keyword match to be performed first requires access to all the emails and the BBC hasn't explained why a simpler request, without the additional filtering, would be more involved.
12. After the complainant submitted their complaint to the Commissioner, the BBC provided an internal review for request 4. That particular concern has therefore been addressed although the Commissioner will discuss internal reviews under 'Other Matters.'
13. The Commissioner's investigation will focus on the BBC's application of section 12(1) of FOIA to the complainant's first three requests and whether there was any breach of section 16(1).

Reasons for decision

Section 12 – cost exceeds the appropriate limit

14. Under section 12(1) of FOIA a public authority such as the BBC can refuse to comply with a request if the cost of complying with it would exceed the appropriate limit of £450 (18 hours work at £25 per hour). Section 12 isn't subject to the public interest test.
15. The part of request 1 to which the BBC has applied section 12 is for written correspondence since 2015 between the BBC and Westminster Council about public access to Media Café.

16. In its submission to the Commissioner, the BBC has noted that in its internal review it had advised the following:

"If we take one of the departments likely to hold the Requested Information, the number of applicable staff is likely to be at least 20. If we assume that each staff member spends approximately 30 minutes locating information that might fall within the scope of the request and another 60 minutes considering the information identified by their search to determine if it relates to your request, that is approximately 30 hours spent by one department alone dealing with your request.

Secondly "copies of written correspondence" is very wide in scope, encompassing not only emails but also physical letters. Therefore, in addition to the large number of staff who would each have to conduct searches of emails and other electronic files (e.g., Dropbox), for a 8-year period, and then extract what is relevant, the BBC would also need to review paper files stored and archived offsite. The nature of how the BBC stores physical documents means that the BBC is not able to carry out keyword searches of a whole document but will need to physically/manually review paper documents for relevancy. Such a search will be further complicated by the fact that paper correspondence with Westminster City Council, if any, are unlikely to be stored in a separate file, and are likely to be held within the relevant topic file."

17. The Commissioner also notes that in its initial refusal of this element, the BBC had said,

"This is because the information you requested is held across several departments of the BBC and covers a time period of nearly 8 years. This would also require a manual review of any information held as we would need to review every piece of correspondence from Westminster City Council to see whether it related to public access of the media café or the Public Space Management Plan."

18. Request 2 is for emails sent between the BBC and Westminster City Council over the past eight years.

19. In its submission to the Commissioner, the BBC has noted that in its internal review, it had advised the following:

"In relation to the number of people, and in order to locate and identify the Requested Information from the retention period, searches would need to be carried out over personal mailboxes and shared mailboxes across the entire BBC. All those search results would then need to be reviewed in order to identify the information relevant to the Request. To provide some context for the scale of this task, the BBC employs more than 20,000 people. The number of mailboxes are even greater

than the number of individuals employed (exceeding 42,000), as we would need to take shared or team mailboxes into account.”

20. The BBC had also explained why it couldn't do a sampling exercise,

“Due to the size of this exercise, it has not been possible to conduct sample searches on the same scale as your Requested Information to precisely estimate how long the entire process would take. However, having spoken to staff in the Information Security team about the potential volume of data to be searched and the time and processes involved in conducting a fraction of that work, I am satisfied that this would exceed 18 hours for the BBC to respond to your Request.”

21. Request 3 is for copies of emails currently stored in live central mailboxes that were sent to or received from the email domain “westminster.gov.uk.”

22. In its submission to the Commissioner, the BBC says that this request didn't appear to reflect the section 16 narrowing advice it had provided to the complainant. The request was again broad and was refused under section 12. The BBC says it did, however, undertake an initial sample search to assist its cost estimate, which it had explained to the complainant. The BBC has told the Commissioner:

“i) The BBC interpreted the reference to “central mailboxes” as shared/public mailboxes i.e. domains which are not specific to an individual person e.g. press.office@bbc.co.uk.

ii) The BBC did a sample search on the New System of emails sent to/from/cc/bcc “westminster.gov.uk” over the 6-months prior to the Complainant's request, which resulted in 97 items. As this was just a representative sample and considering the request was for an indefinite period which would require searches across the New System and Legacy System, the BBC concluded that it was likely to hold a vast number of emails within the scope of the request. The BBC's estimate of the time and resources involved to locate the information clearly exceeded the appropriate limit.”

23. The Commissioner had also asked the BBC to address specific points that the complainant had raised in their complaint to him, noted above.

24. In its submission, the BBC explained how emails are held across the BBC's email systems, to aid understanding as to why its searches in response to complainant's FOIA requests have proven to be complex. The BBC had provided a similar explanation to the complainant in its internal review of its response to request 3.

25. The BBC says its IT system is provided centrally by a third party, Atos. There are currently two “live” email systems in operation in parallel at

the BBC; 1) Office 365 ("New System"); and 2) the legacy on premise Exchange 2010 / 2016 ("Legacy System") which each hold emails which have not been archived. Archives are held on a separate archive system.

26. The BBC says that at the time of writing there are 13,842 mailboxes held on the Legacy System. The majority of these are mailbox enabled public folders, which are used to give multiple users or groups access to common folders for sharing information.

27. The BBC had explained to the complainant the difference between the New System and Legacy System and, in relation to the latter, why centralised programmatic searches were problematic, as follows:

"emails held on the Legacy System cannot be searched using a single estate wide search and instead would require a manual search of individual mailboxes. The BBC would need to identify and extract specific, relevant mailboxes, which would then need to be processed individually using eDiscovery software, before it would be possible to conduct a keyword search."

28. The BBC has gone on to say that it asked its IT provider, Atos, to provide an additional explanation as to why centralised searches of the Legacy System is complex. It provided the following response:

i) Atos has been unable to provide an accurate overview as to how long it would take to conduct a centralised search of the Legacy System, for a specific email domain. When Atos undertook a previous centralised search of the Legacy System many years ago, this involved the use of a dedicated engineer which had to create bespoke scripts to query the mailboxes and folders, which took at least a month to complete;

ii) The BBC's Exchange 2010 on premise infrastructure (consisting of several servers) is aged and regularly requires maintenance from Atos, to ensure stability of the ongoing messaging service. Atos highlighted this required consideration in relation to a centralised search, due to concerns such a search could create extra load in the environment that could potentially disrupt the email service; and

iii) Such a request would not be considered a business-as-usual request for the purposes of the BBC's contract with Atos and would require new terms of engagement and a dedicated resource.

29. Additionally, the BBC says, it notes that the BBC's archive system does not have the functionality to run centralised searches; only mailboxes that have been identified and collected can be searched using this system. For the above reasons, the BBC isn't able to conduct programmatic centralised searches across its Legacy System or email archives. In order to conduct searches in response to the complainant's various requests, the BBC would need to identify specific mailboxes

which would be likely to contain correspondence with Westminster City Council.

The Commissioner's conclusion

30. Regarding request 1, first, the Commissioner cannot agree with the complainant that the BBC hadn't explained to them why section 12 was engaged. Second, he has considered the breadth of the complainant's request – it covers eight years and all written correspondence ie electronic and paper correspondence. In the Commissioner's view the BBC's assessment of how long it would take just one department to identify any relevant information is reasonable. The Commissioner therefore accepts that it would exceed the cost limit to comply with the third element of request 1 and the BBC correctly applied section 12(1) of FOIA to this part. He notes that the complainant in fact did go on to submit a refined request, request 2.
31. Regarding request 2, this is for "all" emails between the BBC and Westminster Council over the past eight years. In the context of the complainant's other requests, a reasonable interpretation of this request could be that it's for all emails about the Media Café. However, it may also be that the complainant had widened the breadth of their request to remove the need to check individual items manually. Either way, there are many thousands of email mailboxes in scope, and emails that are identified would need to be reviewed to see if their subject matter is relevant. He has noted the complainant's concern but sees no reason to doubt the explanation that the BBC has given. The Commissioner therefore accepts it would exceed the cost limit to comply with this request and that the BBC correctly applied section 12(1) to it.
32. Regarding request 3, this is for emails between the BBC and Westminster Council, stored in live central mailboxes. A six month sample from one central mailbox from the 'New' system had retrieved 97 emails. The request covers an indefinite period, a number of central mailboxes are in scope and the BBC runs two "live" systems – the 'New' system and the 'Legacy' system; both would need to be searched. Even if the BBC 'narrowed' the search to emails from the last eight years – as the complainant had specified in request 2 – the Commissioner considers it likely that hundreds of emails would be retrieved, which would then need to be reviewed for relevance. He has again noted the complainant's concern and other information they've provided to him but sees no reason to doubt the BBC's explanation. On the basis of its correspondence to the complainant and submission to him, the Commissioner accepts it would also exceed the cost limit to comply with this request and that the BBC correctly applied section 12(1) to it.

Section 16 – duty to provide advice and assistance

33. Section 16(1) of FOIA states,

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

34. In relation to section 12, the FOIA Code of Practice advises that public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the appropriate cost limit.

35. The BBC advised the complainant how they might refine all three of the requests considered here.

36. For request 1, the BBC advised the complainant to limit their search to: emails and electronic documents, over a three-year period and to a specific sender or recipient of correspondence with Westminster City Council.

37. For request 2, the BBC advised the search be limited to: emails and electronic documents only of members of the BBC’s Workplace team (the team concerned with BBC’s London Estate Management or Broadcasting House), or both, for a period of three years using search terms “public access” AND “public space management plan.”

38. For request 3, in its initial internal review the BBC provided the advice discussed from paragraph 24 of this notice. The BBC says that in its further letter to the complainant dated 1 May 2024, it recommended the search be limited to: emails and electronic documents held by the BBC’s Corporate Legal team over the past 3 years, using search terms “Public Space Management” “PSMP” and “Media Café. This had resulted in a fifth request not considered here.

39. In all three cases the Commissioner considers that the advice and assistance the BBC provided was reasonable and that there was no breach of section 16(1) of FOIA. A public authority isn’t obliged to consider every possible way a request could be refined. In this case the BBC has clearly suggested reasonable ways of reducing the scope to something more manageable, but the complainant has failed to have regard to these.

Other matters

40. Provision of an internal review isn't a requirement of FOIA but is a matter of good practice. The FOIA Code of Practice recommends that an internal review be provided within 20 working days of the request for one. In only the most complex cases should a maximum of 40 working days be necessary.
41. Regarding request 3, the complainant requested an internal review on 16 January 2024 and the BBC didn't provide one until 12 March 2024. (Although the request hasn't been considered here, there was a similar delay in providing an internal review for request 4.) The Commissioner has recorded this for monitoring purposes.

Right of appeal

42. 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

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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