

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2024

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

Decision (including any steps ordered)

1. The complainant requested information from the BBC about an interview with Kirsty Wark relating to antisemitism and related complaints. 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 is 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 22 August 2024, the complainant wrote to the public authority and requested information in the following terms:

"F.O.I request.

Re Front Row August 13 2024 [redacted name] interview with Kirsty Wark.

1(a) How many complaints have the BBC received about the antisemitism, hate and anti Jewish comments as made on Front Row on BBC Radio 4 broadcast first TX on 13.8.2024?

1(b) How many complaints have been investigated?

1(c) How many have not been investigated?

- 1(d) How many complainants [sic] should have been sent full responses with details of any investigations the BBC may have taken.
- 1(e) If complaints have been answered were their further (follow up) questions raised by complainants?
- 1(f) How many complainants have shown dissatisfaction about responses to their initial complaints and asked for more questions.

Re complaints against Antisemitism/ anti Jewish broadcast at the BBC ; other questions.

- 2. How many other complaints about anti Jewish bias and antisemitism have been made to the BBC from and including the date of October [sic] 7 2023 to the current date.
 - 2(a) how many re radio / sounds.
 - 2(b) how many re television / iplayer broadcasts.

3. How many complaints of anti semitism [sic] / anti Jewish coverage were made to the BBC between October 7 2022 and October 6 2023.

4. How many complainant's have asked for an explanation from Kirsty Wark who presented the show and didn't challenge the comment 'Jewish' and 'vile' from [redacted name]."

- 4. On 27 August 2024 the BBC responded to the request. The BBC explained that it believed that the information would be held for the purposes of "art, journalism or literature" and would therefore not be caught by FOIA. As a result, the BBC did not consider it was obliged to provide the information.

Reasons for decision

- 5. The following analysis covers whether the information requested is excluded from FOIA because it was held for the purposes of "journalism, art or literature".
- 6. 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."
- 7. 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.

8. Although it is publicly funded through the licence fee, the BBC competes with other commercial broadcasters who are not subject to FOIA. Releasing information about its output, or related to its output, could therefore commercially disadvantage the BBC. However, for the derogation to apply, the BBC does not need to demonstrate that it would suffer commercial harm if the information were to be disclosed. It only has to demonstrate that the information is held for a derogated purpose.
9. 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.
10. 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.
11. 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
12. 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 or the BBC's journalistic or creative activities involved in producing such output.

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

13. 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.

The complainant's view

14. The complainant argued that the information ought to be disclosed because:

"I am a license fee payer.

I don't believe I should be prevented from having the information provided by the state broadcaster.

Are there other ways you could suggest or could recommend to make my goal achievable please?

I don't understand why some answers can't be given for complaints raised between certain dates etc."

15. As explained above, information about programme complaints, if held at all, is derogated information. The Commissioner considers that the information that has been requested in this case relates to complaints about a particular interview on a BBC programme and therefore it is associated with BBC output.
16. 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. It is therefore not covered by FOIA and the BBC is not obliged to provide it.
17. The Commissioner finding is, therefore, that the BBC was not obliged to comply with the complainant's information requests.

Right of appeal

18. 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

19. 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.
20. 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
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