

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 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 complaints received online. 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 4 July 2024, the complainant wrote to the public authority and requested information in the following terms:

"I require a breakdown of the method used to issue personal responses to complaints made via the official BBC Complaints online page:

<https://www.bbc.co.uk/contact/complaints/make-a-complaint/#/Complaint>

I would like the breakdown to include:

- a) The total number of complaints where a response was requested.
- b) The total number of complaints where a response was issued via an email

- c) The total number of complaints where a response was issued via a telephone call
- d) The total number of complaints where a response was issued via a text message
- e) The total number of complaints where a response was issued via the UK Postal service (i.e. Royal Mail)
- f) The total number of complaints where a response was issued via any method other than those mentioned above (a list of other methods used would be useful but not essential to my request)
- g) The total number of complaints where a response was requested but for any reason the BBC did not respond.

The time period that I am interested in is from 1st Jan 2023 up until the latest date for which you have figures. Just for clarification I am not asking for a daily breakdown I just require a total for each of the aforementioned categories for the whole period."

- 4. On 23 July 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.
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.

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

The complainant's view

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

"This request was refused on the grounds that this information would all be held for the purposes of journalism, art or literature - I refute this assertion as my request was clearly for information relating to their complaints procedure and had nothing at all to do with journalism, art or literature".

15. As explained above, information about complaints received online (and any other means), if held at all, is derogated information. The information requested is about complaints made via a website page that is used by members of the public to complain to the BBC and this information 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.

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