

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 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 relating to coverage of the Gaza conflict. 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 27 August 2024, the complainant wrote to the public authority and requested information in the following terms:

"We have received the following case for your attention:

Feedback Summary: Bias

Feedback Description: I am again unhappy with your response, which once again I would argue shows bias. You mention "deadliest strike" and say "the 12 people killed were children". When Palestinians are killed the BBC never uses words like "Deadliest, Massacres, atrocity" these words are only used when referring to Israelis. In addition, it is

the norm, when Palestinians are killed for the BBC to say something along the lines of " there were a large number of casualties - including a number of women and children.

I would also like to add to my complaint - or if necessary start a new complaint, as your previous response to the above complaint included the following :-

To allow us to reply promptly to your concerns, and to ensure we use our licence fee resources as efficiently as possible, we are sending this response to everyone. The above would appear to suggest that you have a number of complaint similar to my own. However, when I look on the BBC website and access all your complaints eg Fortnightly and executive complaints , there is almost no mention of Gaza. I find this very hard to believe. Are you intentionally misrepresenting the number of complaints you receive over the conflict in Gaza.

Under the freedom of information act can I ask for the number of complaints you have received over your coverage of the Gaza conflict and preferably broken down between those claiming the BBC is bias in favour of Israel and vice versa."

4. On 19 September . 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 do not accept that asking for details of complaints, in any way, allows the BBC to claim that the act does not apply.

The only exemption under the act relates to- Material held for the purposes of creating the BBC output (TV, radio, online etc) or material which supports and is closely associated with these activities."

15. As explained above, information about complaints, if held at all, is derogated information. This type of information would be associated with the BBC's output because the BBC will use information generated by the number and type of complaints it receives to make editorial decisions about its output; either its broadcast content or content it publishes.
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.

Catherine Fletcher
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF