

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 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 the "Slammed, The Eighties" series. 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 11 April 2024, the complainant wrote to the public authority and requested information in the following terms:

"Freedom of information Request - slammed-The Eighties.

The credits did not list the company that made the series. Because of this I require the name and address of this company even if it was made by BBC Wales.

I require to be supplied with a contact telephone number and email address of this company.

I require to know the name of person who responsible for making the series for BBC Wales.

I require to know if [redacted name] has or had any relationship with the company that made the series.

I require to know, apart from taking part in the series, if [redacted name] played an active part in producing the series.

I require to know who at BBC Wales approved the making of the series. If different I require to know who at BBC Wales approved it suitable to be transmitted.

I require to know if [redacted name] viewed the series before it was transmitted.

I require to know how much the series cost BBC Wales to make.

As stated the introduction to each episode included o phototroph of Mrs Thatcher as the Devil. Red Devil horns were shown coming out from each side of her head.

Examining the photograph it appears the horns hod been added either digitally or by other means to an existing photograph of Mrs Thatcher. I require to know if this is correct and that the photograph hod been altered specifically for inclusion in the series. I would like to know how it was altered."

4. On 19 April 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

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

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.

The complainant's view

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

"The Freedom of Information Act comes specifically under the scope of the ICO. Its very existence is based on it. Therefore, because the ICO is the legal enforcing authority of this Act I now require the ICO to look into this matter. I would like to know if the BBCFOI were correct not to reveal the makers of the series for the reason they provided.

Whilst this may appear to be similar to my request for details about the makers of the series I suggest it is not. I am not asking for details about the makers but were BBCFOI right to reject my request based on the exclusions under the Act. This is a question of law and legality which I believe the ICO are required to address regardless of any time limit imposed by the ICO.

If the ICO rule the BBC were wrong I require to be informed of your decision telling me why it does not come under these three conditions.

If it decides the series does come under the three conditions I require the ICO to provide reasons why it does and explain what exception they are relying on and why. For example if the ICO rule that the information I required comes under journalism then it should say why they consider it be be [sic] journalism. A lot of disgraceful photographs and false information were shown in this series about Mrs Thatcher connected to the Wales rugby team. I believe because BBC Wales has not defended why they included Mrs Thatcher in this series in such a disgraceful way there is no connction [sic] and this was not journalism, art or literature. However, it is the view of the ICO that is the important factor in this matter in order to decide if this series comes under the Freedom of Information Act and which exception does it come under".

15. As explained above, information about the series "Slammed, the Eighties", if held at all, is derogated information. This type of information would be associated with the BBC's output because any

programming information including editorial decision making is directly linked to 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.

Catherine Fletcher
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