

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2015

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant requested information about the costs of overseas trips taken by members of the BBC’s Executive Board. The BBC stated that to try and comply with the request would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act 2000 (“the FOIA”). The Commissioner’s decision is that the BBC correctly applied section 12(1) and found that there is no breach of section 16(1).

Request and response

2. On 27 August 2014 the complainant made a request for information under the FOIA about the detailed reasons and expenses for any overseas trips taken by members of the Executive Board:

‘I note that the Freedom of Information Act carries a presumption towards disclosure and that the Information Commissioner has called for the maximum possible degree of disclosure when it comes to matters involving public expenditure.

Please note that the Act allows access to copies of actual documents and not just the information contained within.

Please note that I am only interested in information which relates to the period 27 August 2013 to the present day.

1. *During the aforementioned period has any member of the BBC’s Executive Board travelled overseas at the expense of the BBC?*

- 2. If the answer to the above question is yes can you please identify those members of the Executive Board who travelled overseas at the expense of the BBC.*
 - 3. In the case of each member of the Executive Board can you detail the individual trips they went on. In the case of each board member and each trip can you state their destination (s), the dates of travel, the duration of the trips. Can you also provide an explanation for each and every overseas visit?*
 - 4. In the case of each member of the Executive Board and each individual trip can you state the total cost of the trip to the BBC. In the case of each individual trip can you please provide a breakdown of the costs in terms of accommodation and international travel, travel in destination, subsistence and hospitality.*
 - 5. In the case of each member of the Executive Board and each trip can you please identify and name all accommodation used. This accommodation will include but will not be limited to hotels and or motels and or apartments and or villas.*
 - 6. In the case of each member of the Executive Board and each trip can you state the class and reiterate the price of each and every international airline and or rail ticket.*
 - 7. In the case of each member of the Executive Board and each trip can you provide copies of all expense claims including all receipts and bills submitted to the Corporation.*
 - 8. During the aforementioned period has the BBC ever chartered a helicopter and or private plane for the use of any member of the Executive Board to use at either home or abroad. If the answer to this question is yes can you please provide details for each member of the Executive Board.'*
3. On 10 September 2014 the BBC responded. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450. The BBC suggested it may be able to comply with a new request for a narrower category of information.
 4. On 10 September 2014 the complainant requested an internal review.
 5. On 8 October 2014 the BBC provided the outcome of its internal review which upheld its original position that Section 12 of FOIA applied. In

addition the BBC also applied Section 21, information accessible to the applicant by other means, to questions 1 and 2.

Scope of the case

6. On 29 October 2014 a complaint was made to the Information Commissioner about the way the BBC handled the request for information.
7. The complainant queried whether FOIA allows a right of access to copies of original documents. However, the complainant was informed that the Commissioner's guidance¹ makes it clear that FOIA rights only apply to the **information** held by the public authority. This means that there is no explicit right to copies of original documents and therefore the Commissioner will not consider this as part of the scope of the case.
8. The complainant asked the Commissioner to consider whether the BBC had correctly relied on section 12 of the FOIA. He also raised his concern about the BBC's reference to a 'fishing exercise'.
9. The Commissioner also considered whether the BBC provided appropriate advice and assistance under section 16 of the FOIA.
10. The Commissioner notes that the BBC cited section 21 to questions 1 and 2 during the internal review as the information was in the public domain and a link had been provided as part of the BBC's response.
11. In their submission to the Commissioner on 19 December 2014, the BBC considered that the information requested in relation to questions 1 and 2 is exempt because it is either reasonably accessible by other means (Section 21) or is held by the BBC with a view to publication (Section 22).
12. However, the complainant has not disputed the BBC's citing of Sections 21 and 22. Therefore the Commissioner has focussed his analysis on whether or not the BBC has correctly applied section 12.

¹ The Commissioner's guide explains this in more detail:

<http://ico.org.uk/the-right-to-recorded-information-and-requests-for-documents.pdf>

Background

13. The BBC publishes the expenses of the most senior managers at the BBC including all of the Executive Board per quarter. At the time of the request, the expenses for quarter 2 (July – September 2013) and quarter 3 (October – December 2013) had been published and expenses for quarter 4 (January – March 2014) were due to be published shortly.
14. The complainant was provided with a link to BBC Salaries and Expenses² and it was explained that expenses and receipts are not held together for each separate occasion but are filed in the order in which they were submitted. Claims for expenses can be made up to 6 months after they were incurred.
15. The Commissioner has explored this link and finds that for each manager for each quarter there are two electronic documents (in pdf format) named e-expenses and Central bookings.
16. The BBC's expenses policy applies to all staff and is published online.³ It includes information relevant to the request e.g. class of travel and overseas expenses.

Reasons for decision

Section 12 – The cost of compliance

17. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

18. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work

² <http://www.bbc.co.uk/aboutthebbc/insidethebbc/managementstructure/seniormanagement>

³ http://downloads.bbc.co.uk/foi/classes/policies_procedures/bbc_expenses_policy.pdf

undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

19. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

Would the cost of compliance exceed the appropriate limit?

20. As is the practice in a case such as this, the Commissioner asked the BBC to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

21. In his assessment of whether the BBC has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by the BBC to him on 19 December 2014, as well as the refusal notice and subsequent internal review provided by the BBC to the complainant.

22. The BBC has explained to the Commissioner and the complainant that the information requested is not held in a single source. To locate, retrieve and extract the information requested for the 12 month period (August 2013 to August 2014) will involve:

- Reviewing the electronic calendars of each member of the Executive Board to determine the dates and destinations of overseas travel for the period (question 3)
- Reviewing other documents to establish the purpose of each overseas trip (eg an invitation to attend a function outside the UK.)
- Receipts are filed in the order that they are submitted to the BBC and are outsourced.
- When submitting expense claims, individuals are not required to provide the level of detail which would easily allow the BBC to identify the purpose for the expense or if it related to an overseas trip without further investigation or corroboration with other information held by the BBC.

- Submitting expense claims can be up to 6 months after the event whereas, in line with the BBC's expenses policy to use the lowest cost means of travel, travel fares are likely to be booked in advance.
 - Linking the expense claims and receipts to a particular member of the Executive Board and travel activity will be a particularly difficult and time consuming process. This is because receipts are not filed in chronological order; expense claims can be submitted up to six months after they were incurred; and expenses are paid in different ways. For example, a taxi to the airport could be paid for by the member of staff at the time of the journey who submits a claim at a later date, or the taxi could have been booked and paid for in advance through the central bookings system.
23. In response to the Commissioner's questions to the BBC to estimate the amount of time needed to check the records, the BBC identified that members of the Executive Board had 183 expense claims paid and there were 408 bookings made through the central bookings system during the requested period. However, the BBC made it clear that these figures were for expenses paid or bookings made during the requested period rather than expenses incurred. For the purposes of the estimate, the BBC assumed that the number of expenses paid is comparable to the number of expenses incurred.

Activity	Estimated time taken	Total for each activity
Searching the electronic diary of each Executive Board member and extracting information about the dates, duration, locations and purpose of each overseas trip	One hour for each calendar	12 hours
Searching alternative sources where the purpose of each trip is not clear from the electronic diary	30 minutes per Executive Board member	6 hours
Identifying relevant receipts and expense claims	One minute to review each expense claim (183)* and central booking (408) 183 x 1 = 3 hours and 3 minutes	9 hours, 51 minutes

	408 x 1 = 6 hours and 48 minutes	
Linking the relevant receipts and expense claims to each travel activity and member of the Executive Board	Two minutes to link each expense claim and central booking 183 x 2 = 6 hours and 6 minutes 408 x 2 = 12 hours and 36 minutes	19 hours, 42 minutes
Extracting the requested information from the various documentation onto an Excel spreadsheet	At least an hour	1 hour
Estimated total time to locate, retrieve and extract the requested information		48 hours, 33 minutes

24. The BBC confirmed that their estimate is based on what they believed to be the quickest method of gathering the requested information.
25. Given the BBC's explanation in the difficulty of identifying accurate and reliable information and the above estimated times that would be involved in responding to the complainant's request, the Commissioner is satisfied that although some information may be held the cost of establishing this and therefore the cost of compliance with the request would far exceed the appropriate limit. The BBC was therefore correct to apply section 12(1) of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")⁴ in providing advice and assistance, it will have complied with section 16(1).

⁴ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

27. In this instance, the BBC's initial response confirmed that the information was held and suggested that the complainant view the published expenses '*and ascertain whether there are any particular instances in which you may be interested.*' The Commissioner considers that this provides a reasonable indication of what information could be provided and therefore satisfied the requirements of Section 16(1).
28. During the internal review the BBC stated that the
- 'the scope of these questions is broad and the BBC did provide an indication of what information might be provided within the cost ceiling by suggesting that the applicant narrow the request to a specific occasion or travel activity.....*
- I consider this to be a reasonable position to take based on the way the request is currently worded. In requesting information of the description specified it does not appear that the applicant is following a genuine line of enquiry or requesting information about a particular issue. The nature of the request is so broad that it could be categorised as a 'fishing expedition' (i.e. that the applicant has cast the net widely in the hope that this will enable him to catch information that is noteworthy or otherwise useful to him.'*
29. The complainant is concerned about this reference to a 'fishing trip'. '*Public bodies should not question and or second guess the reason for a request.*'
30. The BBC have stated that '*this is an accurate description of the request in this case*' because of the breadth of the request and the previous 27 requests from the applicant in 2013/2014. '*To comply....will impose a burden by obliging the BBC to sift through a substantial volume of material to isolate and extract the relevant information*' and having considered the request as '*unreasonably broad*' had refused '*it under Section 12 and offering advice and assistance to help the requester to narrow down the scope of the request*'
31. The Commissioner agrees with the complainant that a public authority should process the FOIA request '*in line with the terms and exemptions of the Act*'.
32. However there is no obligation for a public authority to produce a bespoke summary or analysis of available information in the summarised format that the requestor would like.
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33. Under Section 11(1)(c) a requestor may express a preference for a digest or summary of the information. FOIA does not require a public authority to create new information in order to answer a request, and so the public authority does not have to write a new summary if it is not reasonably practicable to do so. In addition, Section 11(1)(c) does not enable a requestor to obtain a summary of information that would otherwise be exempt.
34. In conclusion, the Commissioner considers that the BBC was correct to apply section 12(1) of the FOIA to the complainant's request and that the BBC had satisfied the requirements of Section 16(1).

Right of appeal

35. If 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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