

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 February 2016

**Public Authority:** The British Broadcasting Corporation ('the BBC')

**Address:** Broadcast Centre  
White City  
Wood Lane  
London  
W12 7TP

### **Decision (including any steps ordered)**

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1. The complainant requested information on documents or emails in connection with a letter of support for the BBC signed by celebrities in July 2015. The BBC confirmed that it did not hold the requested information. The complainant considered that more information must be held by the BBC. The Commissioner's decision is that, on the balance of probabilities, the BBC does not hold any further information in this case.
2. The Commissioner has found a breach of section 10 because the BBC did not respond within 20 working days. The Commissioner does not require the BBC to take any steps.

### **Request and response**

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3. On 16 July 2015 the complainant requested four items of information concerning a letter published in support of the BBC which was signed by 29 celebrities. He was only interested in documents/emails which in any way related to the drafting/composition/publication of the letter and was generated before the publication of the letter on 15 July 2015 and which were:
  - held by the BBC's press office

- sent by Danny Cohen
  - held by the offices of Danny Cohen and/or Lord Hall
  - all correspondence between the BBC and the 29 signatories
4. The complainant requested that the BBC included all emails sent from official email accounts and from private email accounts if they were sent via BBC equipment. (The request is printed in full at the end of the decision notice.)
5. On 30 September the BBC responded and stated that
- 'Searches have been conducted by the offices of Lord Hall, Danny Cohen, and Ben Cooper and no records relating to your request have been found.*
- The Press Office also conducted a search and the only relevant records held were part of the Press Office Log, which is a daily list of calls received by the BBC Press Office from journalists. We are withholding this information under section 40(2) (personal information) of the Act.'*
6. The complainant requested an internal review on 1 October 2015. He was unhappy with the BBC's failure to provide any information. He argued that it was now generally accepted that senior BBC employees including Danny Cohen were involved in the drafting and/or composition and/or publication of the letter.
7. On 29 October 2015 the BBC sent the complainant the outcome of its internal review. It upheld its decision that there was no further information and provided an explanation. In relation to the Press Log, the BBC now stated that the Press Log did not hold any information prior to the publication of the letter in July 2015 and therefore did not review the BBC's application of section 40 on this material as it did not fall within the parameters of the request.

## **Scope of the case**

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8. On 3 November 2015 the complainant contacted the Commissioner as he considered that more information must exist:
- 'The BBC initially denied it had played any part in the organisation and publication of the letter.*
- But it later transpired that the Danny Cohen and other BBC staff had indeed played a part.*

*It is my contention that the information held by the BBC - irrespective of whether it is held on BBC email accounts and or private accounts - is held for the purposes of the Act and should be disclosed.'*

9. The Commissioner has considered whether there is any further information held under section 1 of FOIA.

## **Reasons for decision**

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10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. As is the practice in a case such as this, the Commissioner asked the BBC a number of questions to establish if the information is held.
14. In response to the Commissioner's questions about the location of the information, the BBC confirmed that it did not hold any further recorded information falling within the scope of the request.
15. As general comment, the BBC explained that:

*'As this FOI request was lodged in July 2015 (over six months ago), there is some difficulty in re-confirming with certainty at this time the exact particulars of how the search for information was carried out, for example the search terms used. These difficulties are compounded by the departure of a number of BBC staff involved in the handling of the original request including Mr Danny Cohen, his personal assistant and two personal assistants who worked within the Director General Lord Hall's office. The personal assistant of Mr Cohen and the assistants who worked within the office of the Director General would have been directly involved in the searches for information, as it is standard practice personal assistants to have access and oversight of their inboxes.'*

*Despite Mr Cohen's departure, the BBC's is able to provide the written responses below as Mr Cohen confirmed during the processing of the original FOI request and the internal review the searches he and/or his personal assistant completed. Furthermore, key staff members from with the Director General's office, including the personal assistant that carried out the search on the Director General's email, remain at the BBC and were able to provide detailed information which is relied upon below.'*

16. The Commissioner asked the BBC a number of questions to establish what searches had been carried out for information falling within the scope of the request.
17. The BBC *'submits that staff conducted a thorough and reasonable search for the requested information. Searches for the information were carried out by those who would have been likely to retrieve any relevant information.'*
18. On receipt of the request *'an email was sent from the BBC Information Rights team to the Press Office, and the offices of Mr Cohen, Mr Cooper and the Director General. The email requested that a search be carried out by the individual and their respective office for the information.'*
19. When the BBC originally considered the request, *'Mr Danny Cohen was employed by the BBC. Electronic searches for information were carried out by Mr Cohen's personal assistant at the time. Following the searches, Mr Cohen confirmed to the Information Rights team that he did not hold the requested information.'*
20. *'The Press Office checked its press logs, as this was deemed the only place for which the relevant information would be held.'*
21. *'The Director General and his personal assistants' BBC email accounts were searched for information. On this occasion, the request was also sent to other staff members within the Director General's office including the Chief of Staff personal assistant and the Company Secretary's personal assistant. The search was limited to the BBC email addresses of these individuals because if any information was held, it would be held in one of those locations.'*
22. The BBC stated that the electronic data that was searched included
  - a. *Mr Cohen BBC's network computer, email account, calendar, phone and laptop;*
  - b. *Mr Cooper BBC's network computer, email account, phone and laptop;*

*c. The Director General's BBC email account, and relevant staff email accounts within his office; and*

*d. The BBC Press Office's enquiries database.*

*Personal equipment and personal email addresses were not checked for the requested information. As mentioned above, the relevant individuals confirmed that if the requested information was held, the information would only be held on work computers, email accounts and/or work phones.'*

23. The BBC stated that it had *'no reason to suspect that information may be held on privately owned computers or in a private email accounts, the BBC submits that it would not have been reasonable to extend the scope of a search to personal computers or mobile phones, or private emails.'*

24. On the question of which search terms were used, the BBC stated that *'Mr Cooper has confirmed that their respective searches of electronic data included the search terms 'celebrities', 'letter' and variations on those themes. Mr Cooper also confirmed that he searched for information received from Mr Cohen, and searched items by date.'*

25. As Mr Cohen's personal assistant no longer works for the BBC, *'the BBC cannot therefore confirm what specific search terms Mr Cohen used to search for electronic data.'*

26. The BBC stated that *'staff within the Director General's office confirmed that they manually searched through emails received and sent prior to 16 July 2015 for any relevant information. While the staff often do use the search term method to look for information, the manual method was used on this occasion as staff were unaware of what search terms would retrieve the relevant information.'*

27. In answering the Commissioner's question about whether any recorded information within the scope of the request was ever deleted or destroyed, the BBC provided a comprehensive explanation on the process of deleting electronic data and stated that

*'Limited recorded information potentially relevant to the request had been held but was 'double-deleted' prior to receipt of the request. The BBC's understanding is that this information may have included transitory correspondence between talent and employees. It is the BBC's position that any relevant information was not held in the public authority's live records at the time of the request, as it had been deleted and/or it had been overwritten on the system. Due to the nature of the request, which did not seek deleted information, and in accordance with*

*the Information Commissioner's guidance it was not necessary to attempt to recover such information.'*

28. The BBC confirmed *'that double-deletion occurred before 16 July 2015 ...Where there is no legal requirement to retain information or BBC policy does not require retention of the record, it is common practice to delete recorded information. This is to ensure that BBC systems and processes run more efficiently and effectively, ... Where potentially relevant recorded information was held by the BBC, the BBC ceased to retain the requested information in its live records shortly after the information was created.'*

29. The BBC then explained how emails are permanently deleted from each email account's deleted folder and referred to its Records Management Policy.

*'The BBC is of the position that any relevant information was deleted in accordance with the BBC's retention policy. There was no business need to retain the information, and the information was considered to be non-essential information. If any information was held, the deleted information was transitory correspondence between talent and employees, purely informational with a very short time value.'*

30. The BBC confirmed that copies of information that have been deleted are not held in any other location.

31. Having considered the BBC's responses to the Commissioner's investigations, the Commissioner notes that there may have been information relevant to the scope of the request but that it had been deleted by the time of the request on 16 July 2015. Based on the BBC submissions the Commissioner is satisfied that thorough searches have been conducted using appropriate search terms and in appropriate locations. Therefore, the Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any further recorded information within the scope of the request

32. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held at the time of the request. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, he cannot require a public authority to create the information under the FOIA.

33. As the Commissioner's decision is that the information is not held, the Commissioner does not require the BBC to take any steps.

34. Section 10 of the FOIA provides that a public authority should respond to a request for information within 20 working days. The Commissioner

has found a breach in this case because the BBC did not respond within 20 working days. The Commissioner notes that the complainant requested a separate internal review to investigate the delayed response.

## **Other Matters**

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35. The Commissioner is aware that there is a similar request from another complainant that specifically requested information about Mr Cooper. This request did not specify Mr Cooper and the name was first mentioned by the BBC in their response of 30 September 2015. The Commissioner would suggest that the BBC takes greater care in responding to each FOIA request as requested.

## Right of appeal

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36. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

37. 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.
38. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**



The request dated 16 July 2015:

*' My request concerns a letter published in support of the BBC which was signed by 29 celebrities including Dame Judi Dench, Mark Rylance, Sir Lenny Henry, Daniel Craig, J K Rowling and Steven Moffat.*

*You will be aware that this letter has been the subject of a great deal of media coverage.*

*Please note that I am only interested in documents generated prior to the publication of the letter in the Daily Telegraph on Wednesday 15 July.*

*I would like to request the following.*

*1...All documents held by the BBC's press office (including emails) which in any way relate to the drafting and or composition and or publication of the aforementioned letter. Some of these documents will have been generated by the press office itself and others will have been generated elsewhere. These documents will include but will not be limited to the press office's communications with other BBC staff/departments. These documents will include but not be limited to BBC communications with the actual signatories and or other celebrities who were approached by the BBC, It will also include draft versions of the letter and documents relating to how best the letter can be deployed.*

*2...Copies of all emails sent by Danny Cohen between 14 June 2015 and July 14th 2015 which in any way relate to the idea of the letter, the drafting of the letter, its composition and publication. These emails will include but will not be limited to emails to other BBC staff and emails to potential and actual signatories to the letters. Please do include all emails sent to and from Mr Cohen's official BBC email account (s). Please include all emails sent from Mr Cohen's private email addresses if they were sent via BBC equipment.*

*3...Copies of all documents held by the offices of Danny Cohen and or Lord Hall which in any way relate to the idea of the letter, the drafting of the letter, its composition and publication. These emails will include but will not be limited to communications (including emails) with the signatories of the letter and other celebrities who were approached. These documents will also include but not be limited to email exchanges between the two men. In the case of all emails held please include all emails sent to and from BBC email addresses and via BBC equipment.*

*4...Copies of all correspondence and communications (including emails) exchanged between the BBC and the 29 signatories which in any way relates to the idea of the letter, their support for the letter, the drafting of the letter, its composition and publication. Please also include*

*correspondence and communications with the representatives of the signatories. In the case of all emails please include all emails sent to and from BBC email addresses and via BBC equipment.'*