

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2020

Public Authority: British Broadcasting Corporation ("the BBC")

Address: Broadcast Centre

White City

Wood Lane

London

W12 7TP

Decision (including any steps ordered)

1. The complainant requested information in relation to reporting on the Organisation for Prohibition of Chemical Weapons report. The BBC explained the information was covered by the derogation relating to information held for the purposes of journalism, art or literature and hence was excluded from the FOIA.
2. The Commissioner's decision is that this information was held by the BBC for the purposes of journalism, art or literature and so was not covered by the FOIA. She requires no remedial steps to be taken in this case.

Request and response

3. The complainant wrote to the BBC on 9 December 2019 and asked for:

"I'd like to request information on whether the BBC has been requested to withhold information from publication in reference to the OPCW. The Organisation for Prohibition of Chemical Weapons has recently been the subject of at least two whistleblowers who have revealed that the OPCW report on the use of chemical weapons in the Syrian city of Douma on the 7th of

April 2018 is incomplete. The revelations put into doubt the accuracy of the report.

Has the BBC responded to any request from either the domestic government, government services or a foreign government or government services that would in effect prevent the BBC reporting on the whistleblowers revelations?

Please include a response in the negative by the BBC to any request to the BBC as a response."

4. The BBC responded on 18 December 2019. It stated that:

"The information you have requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature'. The BBC is therefore not obliged to provide this information to you and will not be doing so on this occasion. Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by FOIA if it is held for 'purposes other than those of journalism, art or literature'. The BBC is not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities."

5. It therefore refused to comply with the complainant's information request.

Scope of the case

6. The complainant contacted the Commissioner on 28 December 2019 to complain about the way his request for information had been handled. In particular, he challenged the operation of the derogation in this case.
7. The scope of the case is to determine whether the information requested is excluded from FOIA because it would be held for the purposes of journalism, art or literature.

Reasons for decision

8. Schedule One, Part VI of FOIA provides that the BBC is a public authority for the purposes of FOIA but 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."

9. This means that the BBC has no obligation to comply with parts I to V of the Act where information is held for the purposes of journalism, art or literature. The Commissioner calls this situation "the derogation".
10. The complainant has argued that his request falls outside of journalism, art, or literature as defined in the Supreme Court Judgment of 2012¹. He explained that the intent of the request was to discover if a third party had made contact with the BBC. He has argued that his request is not regarding output or journalism, and it could not fall under the editorial definition of journalism as there has been no coverage at all, and therefore no need for the exercise of editorial judgement on the selection of which matters to broadcast or publish.
11. The Commissioner's view is that the information requested, relating to coverage of an external report, would be information held for the purpose of journalism as it is linked to decisions regarding BBC current affairs output. It relates to the selection of material for broadcast and hence in the Commissioner's view falls squarely within the derogation.
12. For the reasons above, the Commissioner is therefore satisfied that the information requested is in this case is held for the purposes of journalism and so is derogated. Therefore, the Commissioner has found that the BBC was not obliged to comply with Parts I to V of FOIA in relation to the complainant's information request.

¹ The judgment can be found here (please be aware that the dissenting judgment comes first and is not the law) <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

The official summary of the same can be found here:

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

Right of appeal

13. 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@justice.gov.uk

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

14. 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.
15. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF