

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2025

Public Authority: British Broadcasting Corporation
Address: Broadcasting House
Portland Place
London
W1A 1AA

Decision (including any steps ordered)

1. The complainant has requested information about the processing of complaints. The BBC initially said that the information was derogated and therefore outside the scope of FOIA.
2. The Commissioner's decision is that the requested information would not be derogated information and so the BBC has not complied with section 1(1) of FOIA.
3. The Commissioner requires the BBC to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, on the basis that any information held would fall within the scope of FOIA.
4. The BBC must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 12 August 2024, the complainant requested information of the following description:

"The BBC complaints process requires users to provide an email address to which a link is sent to verify the submission of a complaint. That link is only valid for 60 minutes and if it is not activated the complaint is not recorded.

1. Does the BBC ever block email accounts of people who have submitted complaints (bearing in mind this will prevent individuals from being able to raise complaints)?
 2. If the answer is yes, what are the specific criteria for doing so and who makes the decision?
 3. What notification if any does the complainant receive?
 4. What right of appeal, if any, is provided and how is the complainant made aware of this?"
6. On 30 August 2024, the BBC responded. It stated that the information would be derogated information. It provided some generic information about what derogated information was, but did not explain how those arguments applied to the specific circumstances of the request.

Reasons for decision

7. Section 1(1) of FOIA requires a public authority to confirm whether it holds information that has been requested and, if it does, to communicate that information to the requester – unless an exemption applies.
8. Not all information the BBC holds is covered by FOIA. In order to be subject to FOIA, the information must be held for a purpose other than "journalism, art or literature."
9. In practice, this means that any information relating to the BBC's output (be that television, radio or online output) is not covered by FOIA. Such information is known as "derogated" information.
10. The BBC must confirm or deny whether it holds any information that falls within the scope of FOIA and communicate any information that does – unless an exemption applies. The BBC is not required to communicate any information that is derogated, nor is it required to confirm whether it does in fact hold specific information that would be derogated.
11. At the outset of the complaint, the Commissioner explained that it was his initial view that the requested information would not be derogated.

12. Whilst the Commissioner noted his well-established position that the content of complaints about the BBC's output is derogated information, this information related to the BBC's internal administrative processes for dealing with correspondence, rather than the content of the correspondence itself. No other connection to output was apparent.
13. The Commissioner therefore asked the BBC to either provide further explanations as to why the information was derogated or to issue a fresh response to the complainant that no longer relied on the derogation. He asked for this to be done by Thursday 9 January 2025.
14. On Thursday 9 January 2025, the BBC contacted the Commissioner to say that, having reconsidered the matter, it now agreed that the information was not derogated. It stated that it would provide a fresh response "as soon as possible" and provided evidence that it had written to the complainant in similar terms.
15. Whilst the Commissioner has no reason to doubt the BBC's intention to provide a fresh response, he considers it important, given the time that has elapsed since the request was originally responded to, that he set a legal deadline for providing that response.
16. The Commissioner considers that the information in question, if it were held, would not be derogated information as it would be held for purposes other than journalism, art or literature.
17. For the avoidance of doubt, the Commissioner makes no finding that the BBC **does** hold any information within the scope of this request. His only decision is that, if the BBC **did** hold information, it would not be derogated – and therefore the BBC should have complied with its usual obligations under section 1(1) of FOIA.
18. The BBC must now issue a fresh response. It should confirm if it holds any information within the scope of the request and disclose any information it does hold, or issue a refusal notice.

Right of appeal

19. 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

20. 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.
21. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF