

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2025

Public Authority: The Channel Four Television Corporation
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to the establishment of the Creative Industries Independent Standards Authority. The above public authority ("the public authority") relied on sections 36 (prejudice to the effective conduct of public affairs), 41 (breach of confidence) and 43 (commercial interests) of FOIA to withhold the requested information.
2. The Commissioner's decision is that section 36 of FOIA is engaged, but that the balance of the public interest favours disclosure. Neither section 41 nor section 43 of FOIA is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information it has relied on sections 36, 41 or 43 of FOIA to withhold. The public authority may make appropriate redactions to comply with its data protection obligations.
4. The public authority 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 June 2024, the complainant requested information of the following description:

“Please send to me copies of all the emails and their associated attachments between Channel 4 and the Creative Industries Independent Standards Authority (CIISA). The date range is from 4th of March 2023 to today.”
6. On 7 August 2024, the public authority responded. It refused to provide the requested information and relied on section 36 of FOIA in order to do so.
7. The complainant sought an internal review the following day. The public authority completed its review on 6 September 2024. It upheld its position that section 36 applied to the withheld information, but now relied additionally on section 41 of FOIA.
8. During the course of the investigation, the public authority also began relying on section 43 of FOIA.

Reasons for decision

Section 41 – actionable breach of confidence

9. Section 41 allows a public authority to withhold information, it has received from another party, if disclosing that information would be an actionable breach of confidence.
10. The Commissioner notes that not all of the information has been received from another party. An email from the public authority has not been received from another party – however it is possible that some of the information that email contains may have been received from another party.
11. Beyond accepting that not all the information was covered by the exemption, the public authority made no effort to delineate between the information that it had received from another party and that which it had created itself. It simply noted that it was also relying on other exemptions to withhold the same information. Given the decision he has reached below, the Commissioner considers it equally unnecessary (albeit for the completely opposite reason), to make such a delineation.

12. In order to establish the basis for a breach of confidence, the public authority must establish that the information has the necessary quality of confidence, that it was imparted in circumstances implying a duty of confidence and that an unauthorised breach of that confidence would be detrimental to the confider.
13. The Commissioner recognises that the information in question is not trivial, nor is it in the public domain. That is sufficient to establish that it has the necessary quality of confidence.
14. Some of the documents are labelled as confidential, but some are not. The public authority argued that most of the information had been created after some of the public bodies affiliated with CIISA had received requests relating to CIISA's work. As such it argued that:

"we consider that CIISA intended to make it absolutely clear to the bodies it was working with that it considered the information to be confidential and was sharing it explicitly on a confidential basis."
15. The Commissioner has grave doubts that correspondence arranging a telephone call or face to face meeting between parties has been provided in conditions of confidence. Nor can one party unilaterally bind another into a duty of confidence unreasonably. However, given the conclusions he has reached about the next stage of the test, it is immaterial which information has or hasn't been imparted in conditions of confidence.
16. When asked why CIISA, as the confider of the information, would suffer detriment if the information were to be disclosed, the public authority explained that:
 - "Disclosure could lead to CIISA becoming hesitant in sharing information and plans with broadcasters, particularly those subject to the FOIA legislation. In turn this would reduce broadcaster interrogation of the proposed set up of the organisation, which would lead to a lessening in the potential to think through and stress test CIISA proposals.
 - "Were some of the more candid worst-case-scenario type questions and concerns raised by broadcasters, aimed at scrutinising the plans for implementing CIISA, to become public, this could lead to a lack of trust in CIISA and its ability to act effectively. This could dissuade individuals from raising concerns to CIISA in future, undermining its ability to fulfil its aims.
 - "Publication would likely lead to increased press interest and attention on CIISA which would require CIISA to divert resources away from establishing the authority to handling and responding

to the resulting coverage. In turn this could lead to less well thought through and robust processes and procedures being established, making CIISA less effective than its potential to achieve its aims.

- "Disclosure of premature information about CIISA's proposed plans for set up could be misleading if those plans are not in line with how CIISA is eventually established. This could lead to CIISA receiving complaints outside of remit/being subject to false expectations in terms of its remit which in turn could undermine public perception of CIISA and lead to reticence in engaging with the authority. For example; Email 3 refers to the cost of psychiatric support services, which may not be something CIISA will be able to offer as a service and could lead to confusion/disappointment/lack of trust from service users in future.
- "Whilst we have focused the above on the impact on CIISA, we note the impact disclosure would have on the other third parties whose views and opinions are contained within the emails and who have similar expectations of confidentiality. Disclosure could impact their relationship with CIISA and other third parties, including Channel 4, and their willingness to fully engage in such cross-industry initiatives in future."

The Commissioner's view

17. In the Commissioner's view none of the bulleted points establishes a substantial detriment to CIISA.
18. The Commissioner is not persuaded that there is a realistic prospect that CIISA will cease sharing information with bodies that are subject to FOIA. Even if it did, that would be a detriment that CIISA had chosen to inflict on itself, not one that flowed from disclosure.
19. If the public loses trust in CIISA because it decides not to carry out functions the public thinks it should carry out, that is, once again a detriment that CIISA will have inflicted upon itself. Any loss of trust is also likely to flow from the publication of CIISA's final terms of reference, not earlier proposals.
20. Disclosure may well encourage legitimate journalistic enquiries about the scope and nature of CIISA's work. It is not clear that this is detrimental and, if CIISA chooses to reprioritise resources, that is once again, a decision of CIISA.
21. The Commissioner is not persuaded that disclosure of the withheld information will have a significant impact on the amount of ineligible

complaints CIISA receives after it has become fully operational and published its final terms of reference. No evidence has been put forward to support that assertion and the Commissioner considers it speculative. All regulatory bodies receive ineligible complaints and this is factored into standard business planning.

22. Finally, if other parties choose not to engage with CIISA, the public authority or other similar bodies in future, that is a conscious choice they have made, not something they have been prevented from doing. In reality, the Commissioner takes the view that the possibility of disclosure is not a significant driver of involvement.
23. On that basis the Commissioner is not convinced that the public authority has established a realistic basis for claiming that CIISA could suffer detriment as a result of disclosure.
24. Even if he were so persuaded, the Commissioner is satisfied that the public authority would have a public interest defence. The strong public interest in disclosure is set out in more detail in respect of section 36.
25. As the public authority has failed to establish a basis on which an action for breach of confidence could be brought, the Commissioner is not satisfied that section 41 applies to any of the withheld information.

Section 36 – prejudice to the effective conduct of public affairs

26. Section 36 of FOIA allows a public authority to withhold information whose disclosure would inhibit the free and frank provision of advice; the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice the effective conduct of public affairs.
27. In order to engage the exemption, a very senior individual within the public authority must provide an opinion stating that the harms listed above either “would” occur (more likely than not) or “would be likely” to occur (chance is lower than 50% but remains realistic). The opinion must be a reasonable one.
28. The public authority provided a copy of an opinion provided by its Chief Commercial Affairs Officer, Mr Martin Baker. The document contains Mr Baker’s signature, but not the date on which that signature was provided. The document does state that Mr Baker’s opinion was sought on 7 August 2024. Given that the public authority issued its refusal notice on that day, the Commissioner has proceeded on the basis that Mr Baker signed the opinion on the same day he received it: 7 August 2024.
29. The Commissioner is satisfied that a valid qualified person’s opinion has been provided – and that it was provided on 7 August 2024.

What was the opinion and was it reasonable?

30. It is the qualified person's role, not the Commissioner's, to provide an opinion on the harm that may result from disclosure.
31. The Commissioner does not have to agree with the qualified person's opinion for it to be reasonable. Nor does the opinion have to be the most reasonable one available. It simply has to fall within a spectrum of opinions that a reasonable person could hold.
32. An opinion will not be reasonable if it is absurd, irrational, or if it fails to identify an applicable interest capable of being harmed.
33. In order to demonstrate that disclosure would "otherwise" prejudice the effective conduct of public affairs, the qualified person must be able to identify a harm that would not be covered by any other exemption.
34. The qualified person's opinion was that disclosure would be likely to harm the free and frank provision of advice. The public authority needed to be free to seek and receive candid advice internally in order to make good decisions. It also needed to be able to provide candid advice to CIISA – especially given that this organisation was still in its infancy. The future offering of advice by the public authority's employees would be likely to be diminished if they did not feel they had a safe space in which to express their views.
35. The qualified person's opinion was also that disclosure would be likely to harm the free and frank exchange of views for the purpose of deliberation. The public authority needed a safe space in which to deliberate and make decisions about how it would work with CIISA. Once again, the quality of the deliberation (and therefore the decision-making it was based on) would be likely to deteriorate because of a chilling effect if the information were disclosed.
36. Finally, the qualified person's opinion was that disclosure would be likely to otherwise prejudice the effective conduct of public affairs. Three separate potential harms were identified:
 - As CIISA was, at the time of the request (and remains), not yet fully operational, the debate was still a "live" matter and required a safe space for further discussion.
 - Future cross-body organisations and industry-wide initiatives would be discouraged from inviting public service broadcasters to participate, either fully or at all, if they were worried that information shared with the public authority may be disclosed.

- The public authority may not be able to play a leading role in establishing industry approaches because privately-owned peer organisations would not trust it with sensitive correspondence.
37. The Commissioner accepts that the first two parts of the qualified person's opinion are reasonable. It is not unreasonable to suppose that individuals may feel somewhat inhibited from expressing their views frankly and candidly if they feared those views would be made available to the wider world. This is particular the case when considering remarks made during a period where a project, or part of a project, is still under consideration with no final decision having been announced.
 38. Whilst the Commissioner does not consider that any of the withheld information forms part of the public authority's internal discussions (internal emails fall outside the scope of the request), he nevertheless accepts that some of the correspondence sent to CIISA is likely to reflect any internal discussions the public authority has had.
 39. However, the Commissioner is not satisfied that the qualified person's opinion is reasonable in respect of disclosure "otherwise" prejudicing the effective conduct of public affairs.
 40. In respect of the first bullet point identified above, this is merely a repeat of the safe space and chilling effect arguments already considered under another part of the exemption. It is therefore not an applicable interest for this part of the exemption.
 41. In relation to the second two bullet points, whilst the Commissioner accepts that these points identify additional harms, not previously covered, his view is that the qualified person's opinion is still not reasonable.
 42. This year is both the 25th anniversary of FOIA receiving Royal Assent and the 20th anniversary of the law coming into effect. Both the public authority and the BBC (also a public service broadcaster) were covered by the original Act and have remained covered (albeit, not for information concerning their respective output) ever since.
 43. Any organisation, whether that be a private company, an industry body or another public authority, that corresponds with the public authority knows (or should know) that there is a possibility that their correspondence could be disclosed. The Commissioner is aware of no evidence to support any assertion of a general reluctance to contact bodies that are subject to FOIA.
 44. Furthermore, the Commissioner considers it very unlikely that CIISA's choice of who to engage with was determined by the degree of privacy

to which CIISA considered its correspondence would be subject to. No evidence has been put forward to support such an assertion.

45. It is far more likely that CIISA's decision to engage with the public authority would have been on the basis that the public authority is a major player within the creative industry sector – both as a direct employer and indirect employer via its commissioning of programmes.
46. It seems very unlikely to the Commissioner that CIISA would be able to generate momentum if it were to exclude two major industry players (the public authority and the BBC) simply because those organisations were subject to FOIA. CIISA is also likely to come into contact with other public bodies such as the Department for Culture, Media and Sport, British Film Institute and the Arts Council – all of which are subject to FOIA.
47. Given the very strong incentives for CIISA (and other similar bodies or initiatives which may come along in future) to involve the public authority in its early stages, the Commissioner is not persuaded that it is reasonable to assume that CIISA would withdraw cooperation if the information were disclosed – and there is no evidence to support such an assumption.
48. Any future initiatives will already be aware of the public authority's FOIA status and the Commissioner does not consider it reasonable to suppose that they would refuse to cooperate with a significant stakeholder purely because of its FOIA status.
49. The Commissioner therefore accepts that the exemption is engaged – but only partially so.

Public interest test

50. Even where the qualified person has identified a possibility of harm, the information must still be disclosed unless the balance of the public interest favours maintaining the exemption.
51. Given that the Commissioner has accepted that it is reasonable to suppose that some harm would be likely to result from disclosure, there will always be some inherent public interest in preventing that harm from occurring. However, the weight to be assigned to that interest will depend on the likelihood that the harm will occur and the severity if it did.
52. The public authority largely pointed to the public interest in preventing the harms identified by the qualified person from occurring.

53. It also noted that there was a public interest in ensuring that CIISA and its processes were properly scrutinised. This in order to check that processes were appropriate for both private and public sector employers.
54. Because discussions were, at the time of the request, still at an early stage, key functions and processes of CIISA were still in development. There was a public interest in preventing potentially misleading information (about options CIISA has considered but not adopted) from entering into the public domain and undermining public confidence.
55. Whilst the public authority acknowledged that there was a public interest in tackling poor behaviour, bullying and harassment across the industry, it argued that this was currently best served by allowing conversations to take place in private.
56. The complainant argued that there was a strong public interest in transparency as he felt that CIISA's funding model was insufficient to prevent conflicts of interest.
57. CIISA's funding model will involve two companies. CIISA Board of Finance will be responsible for collecting membership fees from companies and membership associations within the creative industries. This will be a separate legal entity. The Board of Finance will then provide lump sums to CIISA itself.
58. In principle, this secures a degree of separation between how the funds are collected and how they are spent. As it will be the Board of Finance that collects the fees, CIISA will not know (in theory) whether a complained-about organisation has paid a fee and, if so, how much. This should (again, in principle) avoid a situation in which CIISA is accused of having rejected a complaint in order not to offend a donor.
59. However the complainant argued that, in practice CIISA would know (or could easily find out) whether particular organisations paid a membership fee or not. There would be nothing to stop a particular organisation telling CIISA that it paid a membership fee and attempting to use that as leverage.
60. He also pointed out remarks made by the Secretary of State for Culture, in December 2024, in which she pointed out that she had received a list of the companies that were, at the point, members of CIISA. The Secretary of State named a particular company that, at that time, was not a member. The complainant argued that this was just one example of how information about membership can make its way into the public domain – regardless of the safeguards in place.

61. When seeking an internal review, the complainant also pointed to examples of organisations that had made their funding of CIISA public.

The Commissioner's view

62. In the Commissioner's view the balance of the public interest should favour disclosure.
63. Whilst the Commissioner accepts that it is not unreasonable to suppose that some individuals may feel inhibited from providing free and frank views, he is not persuaded that this would be widespread. Equally he is not persuaded that the inhibition would be severe.
64. Most of the individuals whose names appear within the withheld information appear to reasonably senior within their respective organisations (though seniority does vary). The Commissioner would expect such individuals to be robust and not easily deterred from providing their honest, candid views.
65. Furthermore, the Commissioner notes that, as an organisation whose activities CIISA may need to look into the future, the public authority has an inherent interest in ensuring CIISA's processes and powers are shaped in a way that minimises risk to its future activities.
66. That is not to suggest that the withheld information reveals the public authority attempting to exercise any undue influence – it does not. However, in the Commissioner's view there is a very strong public interest in transparency when a regulated party is helping to shape the future functions of its regulator.
67. Furthermore, the incentive to prevent CIISA's future going in a potentially harmful direction is one that is likely to outweigh most inhibitions.
68. The creative industries collectively employ a large number of people. There have been a number of high profile cases of individuals (often high profile celebrities) within such industries, abusing their power and influence to the detriment of others. In a number of these cases, it subsequently emerged that the individual had already been the subject of at least one complaint, but that no effective action had resulted.
69. The nature of the industry is such that some individuals have reported as feeling that they could not complain, or that their complaints would not be taken seriously, for fear of missing out on work or commissions. Therefore the Commissioner recognises that there is a very strong public interest in ensuring high standards of behaviour in this industry.

70. The Commissioner also notes from the correspondence that most (but not all) the individuals copied in are representatives of large employers. The Commissioner recognises that CIISA may well have had other correspondence to which the public authority has not been privy, but the withheld information does serve a strong public interest in revealing how these large employers are helping to shape what CIISA will (and, also, what it won't) eventually do.
71. Presumably at some point prior to beginning its regular work, CIISA will publish its official terms of reference. That will enable the general public to see what it will and will not be able to offer. Until such times as CIISA commences its normal everyday operations, it is difficult to see what disadvantage would be incurred by someone who incorrectly believed CIISA would offer a particular service.
72. In terms of the withheld information being misleading, the Commissioner is satisfied that, when looked at holistically, each document is placed within its proper context. Any reasonable reader would be able to use the information to chart CIISA's evolution during this period and to see how ideas had been proposed, developed, then accepted or rejected.
73. At the point the request was responded to, CIISA appears to have completed the work of deciding how it should be constituted and funded. The next stage of its evolution is to decide exactly what CIISA should do. That next stage is key to ensuring that CIISA will be looking at the issues the public wants it to be looking at. It is therefore important that those discussions are transparent and not overly-driven by the very people that CIISA is supposed to be regulating.
74. For those reasons the Commissioner is satisfied that the balance of the public interest should favour disclosing the information.

Section 43 – commercial interests

75. Section 43 of FOIA allows a public authority to withhold information whose disclosure would (or would be likely to) harm either its own commercial interests or those of another party.
76. The public authority cited the following reasons for considering that disclosure would be likely to be harmful:
 - "The withheld information includes correspondence about Channel 4's financial contributions to CIISA. Disclosure of this information may prejudice future negotiations concerning the amount Channel 4 could contribute to other cross-industry initiatives.

- "Disclosure could disincentivise our privately-owned peers from including Channel 4 in future cross-industry initiatives if it is perceived that our involvement would mean potentially releasing information about their own views, finances, concerns etc. This would significantly prejudice Channel 4's commercial interests. Channel 4 often cooperates or shares in cross-industry initiatives, all of which provide a great deal of value to Channel 4, whether by reducing the amount we pay for certain services or in terms of providing a level playing field in terms of access to or provision of content etc. Examples include:
 - Clearcast – jointly owned by Channel 4, ITV and Sky.
 - Freely a collaboration between all the Public Service Broadcasters.
 - "Disclosure could prejudice the commercial interests of third parties in the event that the publicly-owned broadcasters are excluded from such joint initiatives, it is likely that fewer bodies involved in establishing, interrogating and resourcing such initiatives would lead to less well thought-through products and services, a greater financial burden on the privately owned broadcasters and a bigger diversion of resources necessary to establish these initiatives."
77. The Commissioner is not satisfied that any of these arguments establishes a realistic prospect of commercial harm.
78. It is not clear to the Commissioner why the public authority is likely to wish to be involved with a further CIISA-like initiative in the near future. CIISA does not appear to have any direct competitors. It is possible that the public authority may wish to become involved in different types of initiatives, but it's not clear why the CIISA figure would provide a relevant frame of reference for determining a contribution to a different initiative.
79. In practice, the Commissioner is sceptical that industry insiders would be completely unaware of, or unable to establish, a rough estimate for the public authority's contribution – particularly seeing as CIISA fee bands are now in the public domain.
80. In respect of the second bullet point, the public authority has put forward no evidence to support an assertion that it is likely to be excluded from future cross-industry initiatives. The partners it already works with know (or should know) that it is subject to FOIA and that the information they share could potentially be disclosed.

81. In respect of the third bullet point, the public authority has again put forward no evidence to support an assertion of harm to third parties and the Commissioner considers the arguments to be highly speculative.
82. If third parties choose not to engage with public service broadcasters because they fear information they hold may be made public, that is their choice to do so. Any harm that might result would result from the decision not to engage, not from disclosure.
83. The public authority's argument on this point is ultimately self-defeating. The greater the risk of commercial harm to third parties from excluding the public authority, the less likely it is that they will do so – irrespective of their concerns about information being made public.
84. As the Commissioner is not satisfied that the public authority has demonstrated a realistic prospect of commercial harm arising from disclosure, it follows that section 43 cannot apply.
85. As none of the cited exemptions apply, the information must be disclosed. The Commissioner is happy for the public authority to make appropriate redactions to remove personal information such as contact details and the names of junior members of staff.

Right of appeal

86. 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

87. 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.
88. 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
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