

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

### **Decision notice**

**Date:** 22 April 2025

**Public Authority:** British Broadcasting Corporation (BBC)  
**Address:** BBC Broadcasting House  
Portland Place  
London W1A 1AA

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

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1. The complainant has requested the dates of any complaints made about Gregg Wallace since 2000. The BBC withheld the information under section 40(2) of FOIA, which concerns personal data.
2. The Commissioner has decided that the BBC correctly applied section 40(2) of FOIA, but the timeliness of its refusal didn't comply with section 17(1). He doesn't require any further steps.

### **Request and response**

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3. The complainant made the following information request to the BBC on 2 December 2024:  
  
"please kindly provide the dates of eacj [sic] individual complaint about Gregg Wallace you have recorded since the year 2000."
4. The BBC responded on 9 January 2025. It advised that it was withholding the requested information under section 40(2) of FOIA.
5. The complainant requested an internal review on 9 January 2025 and the BBC provided one on 6 February 2025. It maintained its reliance on section 40(2) and acknowledged that it had provided its original refusal outside FOIA's 20 working day requirement.

## Reasons for decision

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6. Based on their complaint to the Commissioner, this reasoning covers the BBC's reliance on section 40(2) of FOIA to withhold the information the complainant has requested, and the timeliness of its refusal.
7. Under section 40(2), information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
8. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
9. The Commissioner has first considered whether the information the BBC is withholding under section 40(2) can be categorised as personal data. It has provided this information to the Commissioner.
10. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
11. The requested information here is the dates of any complaints [to the BBC or relevant production company] about the presenter Gregg Wallace since 2000. That would reveal both the total number of complaints and when each one was made. Clearly, since Gregg Wallace is named in the request, he can be identified, and the requested information clearly also relates to him. The requested information is therefore Gregg Wallace's personal data.
12. The BBC has confirmed in its submission to the Commissioner that it doesn't consider that the information is special category or criminal offence data. These categories of personal data are particularly sensitive and warrant special protection.
13. The Commissioner has gone on to consider whether disclosing the personal data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
14. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.

15. Article 6(1)(f) states:

"...processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data..."

16. In order to determine whether disclosing the personal data would be lawful the Commissioner has considered three 'tests': the legitimate interest test, the necessity test, and the balancing test where the complainant's legitimate interests are balanced against the data subject's interests or fundamental rights and freedoms.

17. The complainant has an interest in the extent of complaints raised about one of the BBC's presenters, and how far those complaints go back. That's a legitimate interest for them to have and there's also a wider public interest in those matters.

18. In its initial submission to the Commissioner, the BBC said that it accepts that

"there's a legitimate interest in the public understanding the general nature of any complaints made about those individuals taking part in a BBC programme, insofar as they relate to conduct in the workplace and how the BBC dealt with complaints. The BBC also appreciates that Mr Wallace is a public figure and therefore this legitimate interest in disclosure attracts more weight. The BBC accepts disclosure under the FOI Act will facilitate transparency and accountability, which are legitimate interests."

19. In relation to the second test, whether disclosure would be necessary to address the legitimate interests, the BBC says that it considers disclosure isn't necessary. This is because, it said:

- there's a significant amount of information about the allegations about Gregg Wallace in the public domain
- Banijay, which produces MasterChef, is undertaking an external review of the allegations
- Gregg Wallace has stepped away from MasterChef while the allegations are being investigated; and
- the BBC has commissioned a review of its workplace culture, to report in Spring 2025.

20. The BBC considered that these factors go a significant way to addressing the public interests in transparency and accountability, so that disclosure isn't necessary.

21. At the time of the request, it was known that complaints had been raised about Gregg Wallace, not least through statements Gregg Wallace had made publicly on 1 December 2024 in relation to his role on the BBC programme 'MasterChef'. However, in order to address the specific interests that have been identified in this case the Commissioner considers that it would be necessary for the BBC to disclose the requested information, which would cover all the BBC programmes that Gregg Wallace has presented.
22. There have been other high profile cases involving BBC presenters – such as Jimmy Savile, Tim Westwood and Russell Brand – in which it appeared that complaints had been made over a period of time, but the BBC hadn't taken effective action. Disclosing the requested information in this case would be necessary to shed more light on the extent of complaints about Gregg Wallace and how far the complaints went back. This would indicate whether there was action the BBC could or should have taken and, if so, when would have been an appropriate time for it to take action, and what action would have been appropriate.
23. Since he's found that disclosure would be necessary, the Commissioner has gone on to carry out the final, balancing, test.
24. When he considers this balancing test, the Commissioner takes into account any or all of the following: the potential harm or distress that disclosure may cause; whether the information is already in the public domain; whether the information is already known to some individuals; whether the data subject expressed concern about the disclosure; and the reasonable expectations of the data subject, Gregg Wallace in this case.
25. A key issue is whether the data subject concerned has a reasonable expectation that his personal data won't be disclosed. These expectations can be shaped by factors such as the individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as an individual, and the purpose for which they provided their personal data.
26. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
27. Although it argued that disclosure wasn't necessary, the BBC nonetheless discussed the above factors in its initial submission.

28. It accepted that Gregg Wallace has a significant public profile. But the BBC said that the request captures personal data relating to Gregg Wallace that is sensitive in nature. Such information, "if held", would be held by the BBC in a personnel and HR context, where there's a significant and reasonable expectation of privacy. The BBC said that it considers that, in order to maintain trust and confidence in its complaints procedures for all parties involved, it's important that personnel information is protected where possible.
29. The Commissioner notes the BBC's reference to information "if held" here. Under section 40(5) of FOIA a public authority may refuse to confirm or deny it holds information an applicant has requested if even to confirm or deny information is held would disclose another's personal data. However, by referring to section 40(2) in its response to the request, internal review and submission to the Commissioner, the BBC has, in effect, confirmed that it holds relevant information. In any case, at the time of the request, it was in the public domain that the BBC had received complaints about Gregg Wallace.
30. The BBC confirmed that it doesn't consider it appropriate to ask Gregg Wallace for consent for the disclosure of this information, given the sensitive nature of the information and noting the external review that's currently underway. But, it says, disclosing this information would be likely to result in unwarranted damage or distress to Gregg Wallace, stating "This has a greater impact on the professional reputation and future employment prospects of public figures, and is likely to cause significant distress." The BBC considers that the requested information is very specific information that is sensitive in nature, which is why disclosing it at this time is likely to cause significant distress to Gregg Wallace.
31. The BBC subsequently provided a further submission to the Commissioner. It has discussed the Banijay review, its own investigations and the reasonable expectations of Gregg Wallace and others in light of those. The BBC considers that detail to be sensitive and prefers that it isn't included in this notice.
32. However, taking all the above factors into account, the BBC is satisfied that the balance of the legitimate interest test lies in favour of protecting the rights and freedoms of the individual, ie Gregg Wallace.
33. The Commissioner accepts the BBC's reasoning. There are certainly legitimate interests in the requested information and in presenting a more complete picture of complaints about Gregg Wallace. In addition, at the point of the request, reputational damage and significant distress will already have been caused to Mr Wallace.

34. However, the Commissioner agrees that, in the circumstances, Gregg Wallace would reasonably expect that this further personal data – which isn't currently in the public domain – wouldn't be disclosed to the wider world under FOIA at the time of the request. Disclosing the information would therefore cause him additional distress. The Commissioner considers that the legitimate interests are met to a satisfactory degree by Banijay's review and the BBC's wider review which is reporting in Spring 2025.
35. Based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh Gregg Wallace's fundamental rights and freedoms. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful.
36. Because disclosure would be unlawful, the Commissioner doesn't need to go on to consider separately whether disclosure would be fair or transparent.
37. The Commissioner's decision is that the BBC is entitled to withhold the requested information under section 40(2) of FOIA.

### **Procedural matters**

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38. Section 17(1) of FOIA requires a public authority that's relying on an exemption to withhold information, to provide the applicant with a refusal notice within 20 working days following the date of receipt of the request. The BBC didn't provide its refusal within that timeframe and so it breached section 17(1).

## Right of appeal

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39. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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