



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 4 July 2006**

**Public Authority: British Broadcasting Corporation (BBC)**  
**Address: MC3 D1**  
**Media Centre**  
**Media Village**  
**201 Wood Lane**  
**London**  
**W12 7TQ**

### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has partly dealt with the Complainant's request in accordance with Part I of the Act in that it informed the complainant that some of the information requested was not held. The Commissioner is satisfied that this is so. The public authority did not recognise, however, that further information was requested, and in respect of that information, the public authority failed to confirm or deny that it was held**

**In the light of this decision, the Notice specifies that the public authority provide to the complainant any information relating to the destruction of his complaint that is not disclosed to the complainant in this Decision Notice. Where information is not held, the BBC should state this to the complainant.**

#### **1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**

**1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').**

**1.2 Where a complainant has made an application for a decision, unless:**

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**



the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The complainant has advised that on 8 May 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

“Copies of all papers and decisions by BBC regarding my serious complaint made on or around 1 September 1996 to its then director general John Birt forwarded to him through an MP, Roger Gale, then Chairman of the Back Bench Media Committee.

Copies of all papers relating to Baroness Young of Old Scone’s intervention on my behalf and especially its outcome should also be included along with the reasons why BBC has always refused to answer the complaint.”

- 2.2 On 26 May the public authority advised the complainant that it did not hold the information requested. It explained that it had a retention schedule in accordance with the section 46 of the Act and the code of practice for records management and that in accordance with this retention schedule, records about complaints were kept for five years and that therefore the information had been destroyed.
- 2.3 The complainant wrote to the public authority on 31 May, repeating his request. He explained that his complaint should not have been closed, although the BBC had refused to answer it, and that some information should therefore be held. He quoted extracts from the code of practice mentioned above and asserted that the management of the records relating to his complaint had not been in accordance with that code. He further requested information relating to the destruction of his complaints file. This last aspect of the complaint is discussed in detail in part 4 of this Decision Notice.
- 2.4 On 6 June 2006 the public authority wrote to the complainant to apologise for having failed to respond to his complaint of September 1996. It also confirmed that extensive searches had been and were continuing to be made for the requested information; requested a copy of the letter of 1 September 1996 from the complainant in order to assist its further search; and stated that the letter of 31 May 2006 would be treated as a request for internal review.
- 2.5 On 21 June 2006 the complainant wrote again to the public authority. He pointed out that it had informed him both that the information requested had been destroyed and that searches were still being made and suggested that the public



authority, in taking more time to review its initial response, was in breach of the 20 day time limit. He further stressed that he had not received 'papers concerning who had authorised their destruction, when, where and why.' On 14 July he wrote again. In the main, this letter discussed his complaint of 1996, but also noted that the letter of 1 September was written by an MP on his behalf.

2.6 The complainant and public authority then exchanged further correspondence not relevant to the substance of this complaint. On 27 July the public authority explained to the complainant that in its view the facts that it claimed that records were destroyed and that further searches were continuing were not contradictory. It asserted that the more information provided to the public authority in respect of an information request made to it, the more likely it is that the information could be provided. It further confirmed that the destruction of papers relating to the Act was not governed by the Act or Regulations as these came into force on 1 January 2005, after papers associated with his complaint were destroyed.

2.7 On 10 August 2006 the public authority produced its formal review of the case. This stated that, according to the BBC's records management database, DAISY, having passed the five year retention period, the relevant file had been closed and subsequently destroyed. It confirmed therefore that the requested information was not held.

### **3. Relevant Statutory Obligations under the Act**

3.1 **Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

### **4. Review of the case**

4.1 The complainant applied to the Commissioner for a decision on 28 August 2005. A number of the issues raised are matters over which the Commissioner has no authority and this has been explained to the complainant. In respect of the Freedom of Information Act, the complainant claimed that his complaints file had been 'allegedly destroyed', that the complaint was dealt with out of time, and that the public authority had refused to answer when his file had been destroyed, by whom, why, and on whose authority. The complaint was opened on 31 January 2006.



- 4.2 In further correspondence, the complainant indicated that the information he required was the identity of the person who authorised the destruction of his complaint and the date of that destruction. He suggested both that he had specifically requested this information after receiving his initial response and that it fell within the scope of his original request above. He further claimed that the second part of his information request, relating to Baroness Young of Old Scone, had been ignored.
- 4.3 In respect of the complainant's allegation that the second part of his request was ignored, the Commissioner notes that the use of the word 'included' by the complainant indicates that the second part of the request was a subsidiary part of the whole. In informing the complainant that the requested information was not held, it could reasonably be understood that no part of the request was held.
- 4.4 The key aspect of this complaint is the interpretation of the complainant's request for information. From the BBC's initial response, it is clear that the BBC understood the complainant's request to be for papers which formed part of the file on the complaint made by the complainant in 1996. It informed the complainant that this information was not held. It further informed the complainant, however, that; "In accordance with Section 46 of the Act and the Lord Chancellor's code of practice for records management, the BBC has a retention schedule for records. Records about complaints are kept for five years. The information that you requested has therefore been destroyed in accordance with this retention schedule."
- 4.5 The Commissioner notes that this response is factually inaccurate. The code of practice for records management came into force on 1 January 2005. The records of a complaint made on or around 1 September 1996 and destroyed according to the BBC around five years ago would not have been destroyed in line with this code. As later suggested by the BBC, the records were destroyed in line with a records management retention schedule signed off on 26 January 1993. It has further noted that if the records had not been destroyed at that time they would have been under new policies created in 2004.
- 4.6 The initial response led to a considerable degree of confusion. Having been told that the code of practice applied in this case, the complainant wrote to the BBC on 31 May 2006 quoting various sections of that code. In particular he quoted paragraph 9.5 and clarified his request:

"9.5 states that an 'appraisal documentation system...should show what records are designed for destruction, the authority under which they are to be destroyed and when they are to be destroyed.'

You were asked by me under the first section of my FOI request to provide "all papers and decisions by BBC regarding my serious complaint..." which according to the Act must be in existence. Yet this information was not included with your e-mail and attachment of 26 May 2005..."



- 4.7 The BBC did not understand this to be a request for information about the destruction of the case file; rather it understood the second paragraph above to be unconnected to the one above it and to be a reiteration of the complainant's request (as originally understood) for the papers in the complaint file. Whilst the words 'this information' refer to the appraisal documentation system, the BBC read them as referring again to the first request. Because the letter of 31 May also expresses general dissatisfaction, the letter was taken to be a request for a review.
- 4.8 It is possible to sympathise with the BBC's position. On first reading the case file, the Commissioner similarly interpreted the quoted paragraph as being a reiteration of the initial request. The complainant has written lengthy letters to both the BBC and Commissioner in which he has addressed a number of issues, and the substance of both the request and complaint can be seen to be unclear. Nevertheless, the letter of 31 May was a request for information about the destruction of the case file rather than a repeated request for the papers in the case file. This position is supported by part of a later letter from the complainant of 21 June which points out that he had not yet received from the BBC papers concerning the destruction of the complaint.
- 4.9 The complainant has suggested to the Commissioner that: "My FOI request obviously did not refer to the contents of the original complaint but to the complaint itself and how such a serious matter was handled by BBC." The Commissioner does not agree that this is an obvious request. He accepts that it was reasonable of the BBC to interpret the initial request of 18 May 2006 in the way that it did. In respect of the letter of 31 May, although he understands how the BBC interpreted it in the way that it did, he accepts that the complainant was making a new request for information about the destruction of the case file.
- 4.10 The complainant has insisted to the Commissioner that he had made "repeated requests" to the BBC who "adamantly refused to answer when the file was destroyed, by whom, why and on whose authority." The Commissioner does not accept that the BBC refused to answer the requests. As above, he is of the view that the BBC did not recognise the letter as a request for the information specified by the complainant.
- 4.11 In respect of the issue of time, the complainant has suggested that in misinterpreting his request of 31 May as a request for an internal review, the BBC unlawfully extended the twenty day deadline for response. The reasons for this are detailed above.
- 4.12 Although the BBC did not respond directly to the information request of 31 May by confirming or denying whether that information was held, it did inform the complainant that, as detailed in paragraph 4.5 above, the code of practice was not in force at the time of the destruction of the complaint file and that the provisions of



that code do not therefore apply. The Commissioner also made this point to the complainant on three separate occasions.

- 4.13 The Commissioner requested from the BBC information relating to the destruction of the complaints file. The BBC provided to Commissioner details of the records management policy in use at the time of the destruction of the complaint, the date that that policy was signed off and the name of the person who signed off that policy. It stated that it did not hold the name of the person who destroyed the records. It confirmed that the 1996 complaint had been closed and that it had been destroyed five years after closure. The closure was suggested to be five years ago; that is in 2001. As mentioned in paragraph 4.5 it was also noted that had the complaint not already been destroyed it would have been in 2004.
- 4.14 The complainant has continued to claim that because of the provisions of the code of practice the BBC was under an obligation to keep a paper trail relating to his destruction and that the information requested on 31 May must be held by law. This is not the case. The BBC has stated that the complaint was destroyed before January 1 2005. The provisions of the code of practice do not apply to information destroyed before that time.
- 4.15 The BBC has provided to the Commissioner a full account of extent of its search for the complaints file. On receiving the request of 8 May the BBC searched four areas. No records were found at BBC Information. No records were found at the Programme Complaints Unit (now Editorial Complaints Unit). This Unit explained that its records cover the last five years of complaints and that closed complaints are deleted after five years. One reference to the complainant was found under file reference N001-003, but this showed that the file had been destroyed in accordance with locally agreed retention schedules. The file relating to the complainant was put on file on December 2005 and the BBC has confirmed that even if it had not been destroyed, the date of its creation indicates that it would not have been relevant to the request. No records were found in the Written Archives Centre.
- 4.16 In response to the complainant's letter of 31 May, which the BBC took to be a request for a review, the departments above were asked to double check their records, and further searches were instigated. No records were found in the Governors' Programme Complaints Committee, the Governance Unit correspondence unit, BBC Scotland Secretary's office or the Scottish Press Office. In the Records and Programme Information Centre, a letter from John Birt to John Gale dated 27 February 1006 was found and sent to the complainant. In the Press Office log one reference to a letter in the Daily Herald of September 18<sup>th</sup> 1997 was found. This was not relevant to the request.
- 4.17 The complainant has stated to both the BBC and the Commissioner that he does not accept that his complaint file should have been. He has informed the Commissioner that the final date when he contacted the BBC's complaint unit was



9 November 2001 and that his file should not therefore have been closed until five years after that date. The BBC, however, has stated that the file was closed and would not have been destroyed if it had not been. This complaint is about the handling of the complaint sent to the BBC in 1996. It is not a matter for the Information Commissioner.

## **5. The Commissioner's Decision**

- 5.1 In respect of the contents of the case file, the Commissioner is satisfied with the assurances of the BBC that the file is not held. Extensive searches were carried out by the BBC for the file, and no records were found. The BBC has furthermore stated that the complaint was closed and that it would have been destroyed in accordance with records management policies then in place. The Commissioner's decision in respect of this information is that the BBC denied that it was held in accordance with the requirements of Part I of the Act.
- 5.2 In respect of the information relating to the destruction of the complaints file, the Commissioner finds that by not confirming or denying to the complainant whether information relating to the destruction of the complaint was held, the BBC was in breach of Part 1 of the Act.
- 5.3 Although it is clear that the BBC misunderstood the letter of 31 May, the Commissioner does not find the BBC to be in breach of section 16. It remained in contact with the complainant throughout the course of the complaint and appears to the Commissioner to have advised and assisted the complainant to a reasonable extent. The correspondence of both parties was open to interpretation.
- 5.4 The Commissioner notes that the BBC stated at different points that it regarded the request for review both as being sent to the BBC both on 31 May and 26 July. This also caused the complainant some confusion and although it is not a matter over which the Commissioner can make a decision, he highlights the fact for the sake of completeness.
- 5.5 It is clear to the Commissioner that the substance of this complaint is the handling of the complaint made by the complainant about the BBC in 1996. He cannot adjudicate on this point.

## **6. Action Required**

- 6.1 In the light of the matters set out in paragraph 5.2, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The BBC shall, within thirty days of this Notice, provide to the complainant any information relating to the destruction of his complaint that has not already been



disclosed to the complainant in this Decision Notice. Where information is not held, the BBC should state this to the complainant.

6.2 As the letter of 31 May 2006 refers to the code of practice for records management, the Commissioner suggests to the public authority that it takes the information required to be as clarified by the complainant in the letter of 21 June, namely:

“...the papers concerned revealing who had authorized their [complaints file] destruction, when, where and why.”

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 4th day of July 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**