

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 November 2010

Public Authority: British Broadcasting Corporation
(the BBC)
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Summary

The complainant requested a considerable amount of information about the BBC's Panorama programme. He made one new request for information and also requested the same information that was subject to the Commissioner's previous Decision Notices FS50237250, FS50265735, FS50265739, FS50266075 and FS50316361.

The BBC stated that the requested information fell outside the scope of the Act because it is information held for the purposes of art, journalism or literature. The Commissioner's decision is that the BBC correctly determined that the requested information is genuinely held for the purposes of journalism. Therefore the BBC was not obliged to comply with Parts I to V of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant has explained that the BBC broadcast an edition of 'Panorama' ('What's Next For Craig?') on 12 November 2007. The

programme concerned the use of stimulant medication to treat children with attention-deficit hyperactivity disorder (ADHD).

3. The complainant submitted complaints to the BBC about the content of the programme on the basis that it was misleading and in breach of editorial standards and the Ofcom broadcasting code. The complaint was investigated by the BBC's Editorial Complaints Unit, and the complainant subsequently appealed part of the findings to the BBC Trust's Editorial Standards Committee. He also subsequently submitted a series of requests for information about the BBC's handling of his complaint, including records and correspondence exchanged or obtained in the course of considering the complaints, and the actions and processes of the Editorial Complaints Unit and Editorial Standards Committee.
4. The result of the BBC Trust's Editorial Standards Committee was that it partially upheld the complaint and its findings were issued in February 2010 and can be found at the following link:
http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/panorama.pdf
5. The BBC was also required to broadcast a correction and apology on BBC1 at the beginning or end of a Panorama Programme. This was undertaken on 8 March 2010.
6. The complainant has made a new request for the same information that had been considered in five previous cases:
 - FS50237250;
 - FS50265735;
 - FS50265739;
 - FS50266075; and
 - FS50316361.

These Decision Notices found that the information was held for the purposes of 'art, journalism and literature' and that it fell outside the provisions of Parts I to V of the Act. At the date of this Decision Notice these five cases are being considered by the First Tier Tribunal (Information Rights).¹

¹ Tribunal Case Reference: EA/2010/0042 (which has been consolidated with EA/2010/0121, EA/2010/0123, EA/2010/0124 and EA/2010/0125).

The Request

7. On 7 July 2010 the complainant requested the following information to be provided in accordance with the Act:

"...Also, without in any way derogating from this position, I am repeating each request for information which is the subject of each of the 5 appeals. This is a formal request to the BBC for the information..."

8. The material parts of requests for information that are subject to the five appeals can be found in Appendices A – E of this Notice (redacted where appropriate). The Commissioner has maintained the separation between the complaints that he considered, but renumbered the elements of the requests to ensure ease of reference for the remainder of the Notice. The Commissioner in his five earlier investigations found that all of those requests were for information held for 'the purposes of art, journalism and literature' and therefore the BBC was not required to comply with Parts I to V of the Act. There are 41 requests which are referred to as Requests 1 to 41 in this Notice.

9. On 9 July 2010 the complainant also requested more information from the public authority (this request will be referred to as 'Request 42' in this Notice). He asked for:

"Please produce to me that the emails, correspondence, records notes, unshown [stat] film clips, financial records and all other documents relating to or connected with (1) the preparation for or the making of the broadcast or (2) the defence by Panorama of the complaints made to the ECU and the ESC. These include [Individual R redacted]'s notes and emails relating to interviewing Craig and his family for the broadcast."

10. On 3 August 2010 the public authority issued its response. It explained that it maintained its position in respect of the information which is subject of the five appeals and that it believed that some of the information requested in request 42 was within the scope of the requests under appeal. For the remainder, it explained that it believed that the information requested was not subject to Parts I to V of the Act because it was held for the purposes of 'journalism, art or literature.' It explained that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for 'purposes other than those of journalism, art or literature'. It concluded that the BBC was 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. It therefore would not provide any information in response to requests 1 to 42.

The Investigation

Scope of the case

11. On 7 August 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 1. He was making a formal application for the Commissioner to consider the requests dated 7 and 9 July 2010;
 2. That the burden of proof should be on the BBC to justify their response;
 3. That the information was not held at the relevant time for the purposes of 'art, literature or journalism'. This is because in his view it is historical archive information held for other purposes; and
 4. His intention was to appeal the Commissioner's Decision Notice and that he believed that this would enable it to be considered alongside the other appeals and would simplify those appeals.

Chronology

12. On 13 September 2010 the Commissioner wrote to the public authority and the complainant to explain that this case was eligible and would be allocated to a case officer.
13. On 14 September 2010 the Commissioner wrote to the public authority to gather sufficient evidence to inform his decision on whether the information was held for the purpose of journalism. He received a response on 7 October 2010.

Analysis

Substantive Procedural Matters

Jurisdiction

14. Section 3 of the Act states:

*"3. – (1) In this Act "public authority" means –
(b).... any body...which –
(i) is listed in Schedule 1....."*

15. The entry in relation to the BBC at Schedule 1, Part VI reads:

"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature"

16. Section 7 of the Act states:

"7. – (1) Where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority".

17. This means that the BBC is a public authority for the purposes of the Act but only has to deal with requests for information which is not held for the purposes of journalism, art or literature. The term 'derogated' is used to describe information that falls outside the Act, i.e. information that **is** held by the BBC for the purposes of journalism, art or literature.

18. The House of Lords in the case of *Sugar v BBC*² confirmed that the Commissioner has jurisdiction to issue a decision notice in respect of any request made to the BBC regardless of whether or not the information is derogated. Where the information is derogated, the Commissioner considers that the BBC has no obligations to comply with Parts I to V in respect of that information.

19. The Commissioner will first determine whether the requests are for information held for the purposes of journalism, art or literature and if therefore the BBC is required to comply with Parts I to V in respect of the requests.

² *Sugar v BBC* [2009] UKHL 9

Derogation

20. The scope of the derogation has been considered by the Court of Appeal in the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715. The leading judgment was made by Lord Neuberger of Abbotsbury MR who stated that:

': once it is established that the information sought is held by the BBC for the purposes of journalism, it is effectively exempt from production under FOIA, even if the information is also held by the BBC for other purposes.' (para 44)...*provided there is a genuine journalistic purpose for which the information is held, it should not be subject to FOIA (para 46)'*

21. The Commissioner believes that the test is to establish if the information is held for a genuine journalistic, artistic or literary purpose. If the information is not, then it is not derogated.
22. With regard to establishing the purpose for which the information was held Lord Neuberger of Abbotsbury MR (at paragraph 55) drew a distinction between information which had an effect on the purposes of journalism, art or literature and information that was actually being held for one of those purposes. Based on this judgment the Commissioner considers that for information to be held for a derogated purpose it is not sufficient for the information to simply have an impact on the BBC's journalistic, artistic or literary output. The BBC must be using the information in order to create that output, in performing one of the activities covered by journalism, art or literature.
23. The Court of Appeal adopted the Information Tribunal's definition of journalism in *Sugar v IC and the BBC* [EA/2005/0035] at paragraphs 107 to 109 which set out that journalism comprised of the following three elements:

"107. The first is the collecting or gathering, writing and verifying of materials for publication.

108. The second is editorial. This involves the exercise of judgement on issues such as:

** the selection, prioritisation and timing of matters for broadcast or publication;*

** the analysis of, and review of individual programmes; and*

** the provision of context and background to such programmes.*

109. The third element is the enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and development of individual journalists, the mentoring of less experienced journalists by more experienced colleague, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making."

24. In considering whether the information is held for the purposes of journalism the Commissioner has considered the following factors;
- The purpose for which the information was created;
 - The relationship between the information and the programmes content which covers all types of output that the BBC produces; and
 - The users of the information.
25. There are 42 requests for information in this case. The complainant has argued why in his view the information requested cannot be said to be held for the purposes of 'art, journalism and literature' and had asked that the Commissioner pay particular attention to the passage of time.
26. To ensure clarity, the Commissioner has decided that it is appropriate to subdivide the 42 requests into the following five categories (he has used the notation p. where part of the request relates to one category and part to another):
1. Information about editorial complaints ([1], [2], [3], [4], [7], [8], [9], [10], [11], [12], [13], [14], [15], [17], [19], [20], [21], [22], [23], [p. 25], [28], [30], [35], [36], [37], [38], [39], [40], [p 41] and [p 42]);
 2. Information about complaints handling procedures ([16], [18], [24], [26], [27], [29], [31], [34] and [p 41]);
 3. Information about the programme itself and its editing [p 42];
 4. Information about the complainant's information requests in relation to the programme content ([p. 25], [32] and [33]); and
 5. Information about expenditure in connection with the programme ([5] and [6]).

27. He will consider for each category whether the requested information is genuinely held for the purposes of journalism below.

Category one: Information about editorial complaints

28. The Commissioner has adopted the definition of journalism that was advocated in Tribunal decision EA/2005/0035 and which is mentioned in paragraph 23 above. The Commissioner's view is that information about editorial complaints falls within the third element of that definition. This is because it constitutes a review of the standards and quality of particular areas of programme making to enhance standards. This follows his five previous decisions noted above.
29. The BBC has provided further arguments that explain the concern it has about releasing information in respect of ongoing editorial complaints. The main points were that:
- (1) It considers editorial complaints to be one mechanism by which it supports its programme content, through continuous review of audience reaction and to ensure that future production can be informed from their results;
 - (2) It believed that the limitation of the Act was designed to protect public broadcasters' freedom of expression and that the maintenance of its editorial independence is crucial to allow it to fulfil its function of imparting information and explaining its ideas on all matters of public interest;
 - (3) The release of information of this sort would threaten its independence as it would erode the private space and this may lead to individuals attempt to influence its output. It explained that it needed to consider its past performance while considering how to create and improve its programmes; and
 - (4) The release of the information about audience feedback would damage independence because it would impede the programme maker's ability to weigh all feedback and come to journalistic judgement on future content.
30. The complainant has argued that, now that the result of the complaint has been decided, he believes that it cannot be said that the BBC still holds the information for the purposes of journalism. This is because the information is now historic and he places reliance on paragraph 58 of the Court of Appeal judgment where the Master of the Rolls said:

[58] *As the tribunal rightly observed, information held at one point for purposes of journalism may, at some later point, cease (either temporarily or permanently) to be held for that purpose. In the case of journalism, above all news journalism, information "held for purposes . . . of journalism" may soon stop being held for that purpose and be held, instead, for historical or archival purposes. The BBC, and the Commissioner and the tribunal, will no doubt carefully consider whether this applies to the information, which originated as purely journalistic-related material.'*

31. The Commissioner therefore needs to determine whether the information was genuinely held for the purposes of journalism on 7 and 9 July 2010. It is not material whether the information is also held for other purposes too, provided that it is genuinely held for the purposes of journalism.
32. The BBC has presented detailed arguments about why it believes that the Commissioner should determine that the information remains held genuinely for the purpose of journalism, despite the result of the complaint being decided and the complaints process therefore being exhausted. They are:
 - (1) The effect of editorial complaints transcends the time when they are considered. The material continues to be held for editorial purposes, may influence its editorial direction and inform future content;
 - (2) The outcome (and information relating to the complaint) plays a significant role in helping inform the editorial decisions going forward, which could involve a complaint or programme about similar or identical matters in the future. The information plays a significant role in the content and connects to improving the quality of journalistic output;
 - (3) The BBC may require the same information in the event that it receives an analogous complaint about expert evidence and/or must make complex editorial decisions in the future;
 - (4) The BBC may also need to revisit the matter in the event that there was a further complaint regarding the correction that was broadcast on 8 March 2010;
 - (5) The BBC evidenced that information about Partially Upheld complaints is retained permanently, which evidences the importance that it places on complying with its Editorial

standards. It explained that it was kept permanently to ensure that the BBC is in a position to not make the same mistakes again;

- (6) It explained that the relevant information has not been physically placed in its archive;
 - (7) In any event had information been archived, it should not be regarded as dormant. This is because the information is held permanently in order to inform journalistic content and it proved that 91% of requests for archive material came from production divisions who created content;
 - (8) It believes it is essential that programme information is retained, such as footage, journalist notes, contracts and broadcasts, to be used as a ready resource for future publications; and
 - (9) In its view the physical location of the material in this case does not change the analysis that the information remains held for the purposes of journalism.
33. The Commissioner has carefully considered the arguments of both sides when deciding whether Parts I to V of the Act apply in respect of the information. In doing so has considered the three stage test outlined in paragraph 24 above. He finds that:
- (i) The information was created for the purpose of considering the editorial complaint. He is content that it was created in order to consider the strength of the BBC's journalistic content;
 - (ii) The Commissioner is satisfied that there is a direct relationship between the information requested in respect of editorial complaints and the content of the programme that the complaint is about. In addition, the Commissioner is satisfied that the information relating to the editorial complaint is still being held so the BBC can use it to monitor and manage the quality and standards of its journalistic output; and
 - (iii) He is satisfied that the information about the Editorial complaints will continue to be used by those who monitor and manage the quality, standards and impartiality of its journalistic output. It is also likely to be used by those who create future BBC output.

34. The Commissioner is satisfied that for this category of information the BBC continues to genuinely hold the information for the purposes of journalism. As explained above evidence gathered to consider editorial complaints and their results is information created as part of the management and enhancement of the standards and quality of journalism. It also used by those involved in the production of future output. These fall within the second and third paragraph of the Tribunal's definition of what 'journalism' means.
35. He therefore finds that the relevant information was held for the purpose of journalism and so the BBC was not obliged to comply with Parts I to V of the Act.

Category two – information about complaints handling procedures

36. This category concerns information on the BBC's procedures and protocols for handling editorial complaints and subsequent appeals. As outlined at paragraphs 28 to 35, the Commissioner considers that information relating to complaints about BBC content is not subject to Parts I to V of the Act. The Commissioner believes that the requested procedures and protocols outline the processes followed by the BBC when considering complaints about programme content. The consideration of complaints is part of the process of managing the quality and standards of journalism. The Commissioner understands that the protocols constitute an integral tool used to guide and regulate the process of investigating editorial complaints. He accepts that this information is used in the process to enable the enhancement of the standards and quality of journalism and therefore it is held for these purposes (so falls within the third paragraph of the definition of journalism in paragraph 23 above). The Commissioner therefore considers that the information covered by this category is genuinely held for the purposes of journalism.
37. At the date of the request the relevant information was held for the purpose of journalism and so the BBC was not obliged to comply with Parts I to V of the Act.

Category three - information about the programme itself and its editing

38. The Commissioner is satisfied that the choice about what material to broadcast and what material to leave out of a programme amounts directly to being information about editing.
39. The Commissioner believes that this information satisfies the definition of journalism in both paragraphs 107 (the collecting, gathering, writing

and verifying of materials for publication) and 108 (editorial, the selection, prioritisation and timing of matters for broadcast journalism) of the Information Tribunal judgment cited in paragraph 23 above. He believes that unused content is retained for reference by those involved in the creation of future broadcasts and it is held directly for journalistic purposes.

40. As the relevant information was genuinely held at the date of the request for the purpose of journalism, the BBC was not obliged to comply with Parts I to V of the Act.

Category four – information about the complainant’s information requests in relation to the programme content

41. As noted above, since the broadcast of a particular ‘Panorama’ programme the complainant has submitted complaints to the BBC about inaccuracies in the broadcast and has made related requests for information to the BBC. The Commissioner considers that subsequent requests for information about the handling of a complaint about broadcast content are also requests for information which is held for the purposes of journalism.
42. As noted above, in the Commissioner’s view the consideration of complaints about programme content is one of the mechanisms that the BBC uses to manage the quality of its journalistic output. It therefore follows that information that is generated when dealing with particular complaints is in effect information generated as part of that management process. The Commissioner considers that even after the complaint handling has been concluded, the information requested is still genuinely held for the purposes of journalism as it is retained so that those involved in the management of standards can refer to it.
43. As the relevant information was held (at the date of the request) for the purpose of journalism, the BBC was not obliged to comply with Parts I to V of the Act.

Category five - information about expenditure in connection with the programme

44. This category concerns information about programme costs incurred by the BBC in the making of the ‘Panorama’ programme ‘What Next For Craig?’ The requested information is details of all payments made to named individuals associated with the programme, and all expenses and payments in connection with the programme.

45. In light of submissions made by the BBC, the Commissioner appreciates that the creation of programmes or a series of programmes involves the consideration of many factors. One of which is who the subjects of programmes should be and whether or not to pay those people a fee or cover their expenses. At the time of the request the programme and the apology had been broadcast. The records of the related costs will have been created for the purpose of managing the production and associated costs of the programme. Furthermore they will likely have been retained for use by programme makers to inform decisions on the content and production costs of future programmes of a similar nature, particularly when there is a revision of process in order to accord with the Editorial Standards Committee recommendations. The Commissioner is satisfied that such decisions form a material and genuine part of the editorial aspect of journalism and that therefore the information requested is derogated.
46. The Commissioner has been mindful of paragraph 55 of Lord Neuberger of Abbotsbury MR judgment in *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715 which reads:
- '[55] In my view, whatever meaning is given to "journalism" I would not be sympathetic to the notion that information about, for instance, advertising revenue, property ownership or outgoings, financial debt, and the like would normally be "held for purposes . . . of journalism". No doubt there can be said to be a link between such information and journalism: the more that is spent on wages, rent or interest payments, the less there is for programmes. However, on that basis, literally every piece of information held by the BBC could be said to be held for the purposes of journalism. In my view, save on particular facts, such information, although it may well affect journalism-related issues and decisions, would not normally be "held for purposes . . . of journalism". The question whether information is held for the purposes of journalism should thus be considered in a relatively narrow, rather than a relatively wide, way.'*
47. The Commissioner believes that information that relates to the costs and expenses in producing specific programmes is distinct from the general financial information that was mentioned in the paragraph above. The Commissioner considers that, for the reasons given above, the information requested is genuinely held for the purposes of journalism and the BBC was not obliged to comply with Parts I to V of the Act.

The Decision

48. The Commissioner's decision is that the requests are for information held for the purposes of journalism the BBC was not obliged to comply with Part I to V of the Act in this case.

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 8th day of November 2010

Signed

**Jo Pedder
Group Manager**

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

Annex A – requests considered in FS50237250

On 8 February 2009 the complainant wrote to the BBC to request the following information (BBC reference RFI20090317) and the items that are subject to the Appeal are outlined below:

- [1] What communications were there within the Editorial Complaints Unit (the "ECU") concerning or relating to the complaints made by [the complainant], and/or the supportive material from [Individual A redacted], ("the Complaints") concerning or relating to "What's Next for Craig?" broadcasted by Panorama on BBC 1 on 12th November 2007 ("the Broadcast")? Please produce all emails, drafts, notes and documents concerning communication within the ECU concerning or relating to the Complaints.
- [2] What communications did the ECU have with anyone outside the ECU concerning or relating to the Complaints? Name the individuals, give the dates and set out what communications took place. Please produce all emails, drafts, notes and documents concerning communication by the ECU with anyone outside the ECU concerning or relating to the Complaints.
- [3] What communications did the ECU have with or from [Individual B redacted] or [Individual C redacted] in connection with or in relation to the Complaints? Please produce all emails, drafts, notes and documents concerning such communications.
- [4] Did the ECU communicate with Panorama or receive communication from Panorama concerning or relating to the Complaints? What communications were there when and with whom? Please produce all emails, drafts, notes, and documents concerning or relating to such communications.
- [5] Have payments been made by the BBC in connection with the Broadcast to or for the benefit of or at the request of [Individual D redacted], [Individual E redacted], or Craig or his family? What payments have been made? Please produce all emails, drafts, notes and documents concerning or relating to such payments.
- [6] What expenses were incurred and what payments were made by the BBC in connection with the Broadcast? What were they for and to whom were payments made and in what amounts? Please produce all emails, drafts, notes and documents concerning such expenses or payments.

- [7] Did [Individual F redacted] have any communications with or from anyone relating to or connection with the Complaints or the request by [the complainant] that there should be a new broadcast? What communications did she have with whom? Please produce all emails, drafts, notes and documents concerning such communications.
- [8] What complaints other than the Complaints, were received by the BBC after the Broadcast which related to the Broadcast, and what responses were made to those complaints? Please produce all emails, drafts, notes and documents concerning such communications. Were there any communications within the BBC about any of those complaints and if so what communications? Please produce all emails, drafts, notes and documents concerning such communications.
- [9] Panorama purported to inform the ECU that [Individual G redacted] had changed his mind. What communications were there to and from Panorama, or within the ECU concerning this alleged change of mind on the part of [Individual G redacted]? Please produce all emails, drafts, notes and documents concerning the alleged change of mind.
- [10] What enquires were conducted by the ECU into the Complaints and with what results? Please produce all emails, drafts, notes and documents concerning the enquiries.
- [11] What draft documents were produced by anyone in the ECU relating to or connected with the Complaints? Please produce all emails, drafts, notes and documents concerning the production of drafts.
- [12] Has the Director-General of the BBC or his office had any communications with anyone in connection with or in relation to the Complaints or the Broadcast or the request by [the complainant] that there should be a new broadcast? Please produce all emails, drafts, notes and documents concerning such communications.
- [13] Following the Broadcast have there been any communications to or from the journalist responsible for the Broadcast relating to or connected with the Complaints or the Broadcast or the request by [the complainant] that there should be a new broadcast? Please produce all emails, drafts, notes and documents concerning such communications.
- [14] Did the ECU consider whether to carry out inquiries into the cases of Craig and [Individual E redacted] featured in the Broadcast? Please produce all emails, drafts, notes and documents concerning this aspect of the Complaints and how this aspect was dealt with by the ECU.

- [15] The report of [Individual B redacted] and [Individual C redacted] issued with the letter dated 29th January 2009 describes itself as amended on 16th July 2008. What amendment or amendments were made to this report before it was finalised when and why? Please produce all emails, drafts, notes and documents concerning or relating to the production of this report and its amendments.
- [16] Please state why it took the ECU from mid April 2008 until 29th January 2009, a period of over 9 months, to produce the letter dated 29th January 2009. Please give the exact chronology of what was being done by the ECU over this period. Please produce all emails, drafts, notes and documents concerning or relating to why it took the ECU over 9 months to produce the letter.

Annex B – requests considered in FS50265735

The Commissioner's investigation in FS50265735 considered the first two requests that were originally submitted on 6 May 2009:

- [17] What has the ECU [Editorial Complaints Unit] been doing since 29th January 2009 in connection with deciding what should be the consequences of its decision that the Panorama broadcast "What's next for Craig" (BBC 1, 12th November 2007) ("the Broadcast") was inaccurate? What communications have there been with whom and when? Produce all emails or other documents relating to such communications. Produce all internal notes emails or other documents.
- [18] What communications have there been within or with or by (1) the Editorial Complaints Unit or (2) the BBC Trust or (3) the BBC (including but not limited to Panorama or its editors, the Director General or his office, or [Individual F redacted]), about what should be the consequences of the decision by the ECU that the Broadcast was inaccurate? Produce all emails or other documents relating to such communications."

Annex C – requests considered in FS50265739

The Commissioner's investigation in FS50265739 considered the requests that were originally submitted on 3 June 2009 which are noted below:

"Schedule 1 – the "independent editorial adviser"

[19] The "independent editorial adviser":

- (i) who this is and his curriculum vitae;
- (ii) his e mail and telephone number;
- (iii) on the basis of what information relating to the appointee he was selected and appointed as the independent editorial adviser;
- (iv) all emails, notes and other documents, including all internal emails, relating to considering and making his selection and appointment;
- (v) all information relating to any connections which he has or may have had with Panorama;
- (vi) all information relating to any connections which he has or may have had with the BBC or anyone else involved in or connected with the Panorama Broadcast ("What's Next for Craig?" on 12th November 2007), or this appeal.

[20] I would be grateful for any instructions given to or communications with the "independent editorial adviser" in relation to this investigation.

[21] I would also be grateful for all information obtained by the "independent editorial adviser" in relation to the investigation, my complaints and/or the appeal.

[22] I would like to see all communications or correspondence from Panorama which are held by the adviser in connection with my complaints, the investigation or the appeal.

Schedule II – The Committee

[23] The names of those on the Committee dealing with the appeal.

[24] In relation to each member:

- (i) all information relating to any connections which he has or has had with Panorama;
- (ii) all information relating to any connections which he has or has had with the BBC or anyone else involved in or connected with the Panorama Broadcast ("What's Next for Craig?" on 12th November 2007), or this appeal."

Annex D – requests considered in FS50266075

On 22 July 2009 the complainant wrote to the BBC to request the following information:

- [25] "I would also be very grateful if you could inform whether since the date of the last request under the FOIA covering this, there have been any communications, drafts, correspondence or other documents or conversations generated by my complaint or the "appeal" to the BBC Trust concerning "What's Next for Craig?" or my requests for information? Please provide these to me. This is a further request for information under the FOIA."

On 26 July 2009 the complainant wrote to the BBC to request the following information:

- [26] Please list each stage in the ECU process from when the case was first referred to the ECU up to the date of the request, stating what happened in that stage, giving the dates, and stating any explanation of why it took that length of time.
- [27] When does the ECU intend to produce its decision? Please state who has that intention and on what it is based.
- [28] What does the Chairman of the ESC remember about the oral or written communication(s) made to him about the case by [Individual H redacted]? What was stated, when and by whom? Was anyone else present? What documents or information was given to the Chairman? Please answer this for all communications including communications about the independent editorial advisor and her appointment.
- [29] Is it the practice of any members of the ESC to have "private" conversations or communications with [Individual H redacted] or others at the BBC about ongoing cases or "appeals", which are not disclosed or not disclosed in full to the complainant?"

On 31 July 2009 the complainant wrote to the BBC to request the following information:

- [30] "Please furnish the following:

Excluding the Excluded Information, please update the Requestor by providing him with any documents or information held by the deputy Director-General of the BBC concerning or relating to the appeal or its future conduct or the complaints which form the subject matter of the

"appeal" to the BBC Trust, including any discussions or communications he has had with [Individual I redacted]."

Annex E – request considered in FS50316361

On 9 October 2009 the complainant wrote to the BBC to request the following information:

[31] I would be very grateful if you could help me with the "protocols agreed between Management and the Trust" referred to by [Individual I redacted] in his email to [Individual J redacted]. Which part(s) of which protocol(s) are referred to by [Individual I redacted]. Please may I see them?"

On 21 October 2009 the complainant wrote to the BBC to request the following information:

"I had asked for:

[32] Have there been any communications within the BBC concerning the requests for disclosure made by Mr Steven Gee QC in the period from Friday 25th April to 2nd May 2008, to the ECU (commencing with his email dated 25th April 2008 to [Individual K redacted]), [Individual F redacted] (his email dated 29th April 2008 to her) and the Chairman of the BBC Trust relating to the Broadcast (see email dated 25th April 2008 and response from [Individual J redacted] dated 29th April 2008)? What communications have there been with whom and when? Produce all emails or other documents relating to such communications.'

[33] Please produce the correspondence between [Individual I redacted] and [Individual F redacted] about my request for Disclosure. Her reply to me refused my request on the basis that it was a request for "background" material. Was she informed by someone that the Panorama materials sought by me including their defence, were "background" material. Why did she call the Panorama materials including their defence, "background" materials? Please produce the correspondence."

Also on 21 October 2009 the complainant wrote to the BBC to request the following information:

[34] "An investigation made by the ECU is required to be carried out "independently". What rules protocols directives or other documents lay down this requirement? Please produce them."

On 26 October 2009 the complainant wrote to the BBC to request the following information:

[35] "Please provide me with the correspondence, notes and other documents including emails dating from (including for the avoidance of doubt after) 2nd October 2009 relating to or connected with (1) the questions raised by [the complainant] concerning the independence or lack of independence of [Individual I redacted] in connection with the complaints made concerning the broadcast "What's Next For Craig?" (Panorama BBC 1 on 12th November 2007), or (2) the requests for information made by [the complainant] since 2nd October 2009 concerning those questions.

Please limit the scope of search to documents (including emails) held by [Individual L redacted], [Individual H redacted], and [Individual M redacted] at the BBC Trust, and [Individuals N - Q redacted], [Individual I redacted] and the FOI section (which has been dealing with outstanding requests for information)."

Also on 26 October 2009 the complainant wrote to the BBC to request the following information:

"I would be most grateful if you would produce to me:

[36] the correspondence including notes of conversations (stat) and emails between the BBC Trust and the advisor it has appointed in respect of my "appeal";

[37] draft reports which relate to or are connected with my "appeal" prepared by the advisor,

[38] the materials and other documents sent to the advisor or received from or by her which relate to or are connected with my "appeal",

[39] the materials and other documents held by the advisor which relate to or are connected with my "appeal",

[40] correspondence including emails and other documents or materials received by or sent by the BBC Trust which relate to or are connected with my "appeal"."

On 28 October 2009 the complainant wrote to the BBC to request the following information:

[41] "Please tell me what was the further "action point agreed with BBC News" and provide details of the agreement to which you refer and

how it was reached. Please produce all documents relating to the negotiations, discussions and agreement.

Legal Annex - Relevant Statutory Provisions

Section 1(1) states that –

“Any person making a request for information to the 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 the information communicated to him.

Section 3(1) states that –

“in this Act “public authority” means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –

- (i) is listed in Schedule 1, or
- (ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6”

Section 3(2) states that –

“For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

Section 7(1) states that –

“Where a public authority is listed in schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority.”

Schedule 1, Part VI reads:

“The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature”