

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 March 2011

**Public Authority:** British Broadcasting Corporation  
**Address:** 2252 White City  
201 Wood Lane  
London  
W12 7TS

### Summary

---

The complainant requested information relating to the pre-emptive costs to the BBC of the coverage of the last papal succession. The BBC stated that the requested information fell outside the scope of the Act because it is information held for the purposes of journalism, art or literature. The Commissioner's decision is that the requested information is genuinely held for the purposes of journalism. Therefore the BBC is 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 the BBC has complied with its duties under the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. On 20 October 2010 the complainant requested the following information to be provided in accordance with the Act:

*" I am writing to obtain information on pre-emptive costs relating to the coverage of the last papal succession. I should in particular like information on the following;*

- *At what date the BBC began to hire accommodation in Rome for staff in anticipation of the death of the last Pope, under the planning principle that advanced hire would reduce costs from short notice booking*
  - *When the BBC began to hire vantage point locations for emplacement of cameras for outside vista shots of Rome*
  - *What was the end cost of these hirings by the time the requirement for their use had ended*
  - *What was the use to which these locations had been put while John Paul II was still alive, with particular reference to the interim use of the accommodation, who used it, and if any charges were made for its hiring out to offset costs."*
3. On 28 October 2010 the BBC issued its response. It explained that it believed that the information requested was excluded from the Act because it is 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 the request for information.

## **The Investigation**

---

### **Scope of the case**

4. On 29 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- That his request was about financial issues, rather than journalistic freedoms;
  - That the defense used by the BBC in this would logically mean that it would not be obliged to reveal if staff had spent money on drinks in an editorial meeting, which he argued would expand the provisions of the exemption intended by Parliament.

### **Chronology**

5. The Commissioner wrote to the BBC on 9 December 2010 explaining that a complaint had been made about its handling of this request for

information. However, it was not considered necessary to go back to the BBC in order for further submissions to be made.

## Analysis

---

### Substantive Procedural Matters

#### Jurisdiction

6. Section 3 of the Act states that:

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

7. 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"*

8. 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".*

9. 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.

10. The House of Lords in the case of *Sugar v BBC* [2009] UKHL 9 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.

11. The Commissioner will first determine whether the request is 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 request.

## Derogation

12. 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." (paragraph 44), and that "...provided there is a genuine journalistic purpose for which the information is held, it should not be subject to FOIA." (paragraph 46)*

13. The Commissioner considers that it follows from this that if the information is genuinely held for any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to the Act.
14. 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.
15. The Court of Appeal adopted the Tribunal's definition of journalism in *Sugar v IC and the BBC* [EA/2005/0032] at paragraphs 107 to 109 which set out that journalism comprises 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,*

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

*109. The third element is the maintenance and 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 colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making.”*

16. 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.
17. The information that has been requested in this case is the pre-emptive costs for the coverage of the last Pope's death and the succession of the new Pope. The purpose for which this information was created was to provide logistical support to the coverage of the last Pope's death and the impending succession in order for the BBC to deliver on its journalistic remit.
18. In light of submissions made by the BBC in previous cases such as in FS50352659 the Commissioner understands that the creative output of the BBC in relation to major journalistic events such as the death and succession of a Pope is directly influenced by the allocation of funds which are, in turn, determined by editorial decisions. The request itself asks for information about the pre-emptive costs of the coverage surrounding the death of one Pope and the succession of another which contains within it an element of uncertainty requiring logistical and financial support. He understands that the general journalistic output of the BBC is affected by budgetary decisions or constraints and that the costs of coverage can alter. The Commissioner accepts the BBC's explanation in other cases like these that such events are not unique, that they will have been informed by similar coverage of past events and that they will inform future logistical scenarios and editorial decisions taken. The Commissioner also accepts that the expenditure involved in the coverage of events such as these feed into future similar events.
19. For all of the reasons above, the Commissioner is therefore satisfied that the information requested is derogated. Therefore, the Commissioner has found that the request is for information held for the

purposes of journalism and that the BBC was not obliged to comply with Parts I to V of the Act.

## **The Decision**

---

20. The Commissioner's decision is that as the request is for information that is held for the purposes of journalism, art or literature the BBC was not obliged to comply with Part I to V of the Act in this case.

## **Steps Required**

---

21. The Commissioner requires no steps to be taken.

## Right of Appeal

---

22. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 17<sup>th</sup> day of March 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## 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”*