

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2012

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant has requested information about complaints received regarding the BBC’s coverage of the royal wedding on 29 April 2011 and the total cost of broadcasting it. The BBC explained the information was covered by the derogation and therefore excluded from the FOIA.
2. The Commissioner’s decision is that this information is held by the BBC genuinely for the purposes of ‘journalism, art or literature’ and does not fall under the FOIA. He therefore upholds the BBC’s position and requires no steps to be taken.

Request and response

3. On 1 May 2011 the complainant made the following request to the BBC:
‘Please provide, in electronic format, the following information:
 1. *The number and nature of complaints received regarding BBC coverage of the royal wedding on April 29 2011.*
 2. *The estimated total cost to the BBC of broadcasting the royal wedding on April 29 2011.*
4. The BBC responded on 26 May 2011. It stated that the information requested is excluded from the FOIA because it is held for the purposes of ‘journalism, art or literature.’ It explained that Part VI of Schedule 1 of the FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the FOIA 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.

Scope of the case

5. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. In particular, he challenged the operation of the derogation in this case.

Reasons for decision

6. Schedule One, Part VI of the FOIA provides that the BBC is a public authority for the purposes of the FOIA but only has to deal with requests for information in some circumstances. The entry relating to the BBC states that the BBC is a public authority:

"...in respect of information held for purposes other than those of journalism, art or literature."

7. This means that the BBC has no obligation to comply with Part I to V of the FOIA where information is held for 'purposes of journalism, art or literature'. The Commissioner refers to this as 'the derogation'.
8. The House of Lords in *Sugar v BBC* [2009] UKHL 9 confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the information is caught by the derogation.
9. 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).

10. The Commissioner considers that it follows from this that if the information is genuinely held for any of the three derogated purposes – ie. journalism, art or literature - it is not subject to the FOIA. His role is to consider whether the information was genuinely held for the derogated purposes or not.
11. 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 in fact 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.
12. The Court of Appeal adopted the Information Tribunal's definition of journalism which set out that journalism comprises three elements.

- “1. The first is the collecting or gathering, writing and verifying of materials for publication.*
- 2. 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.*
- 3. 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.”*

13. The information that has been requested in this case is the number and nature of complaints received about the BBC's coverage of the royal wedding of 29 April 2011 (the royal wedding) and the cost of broadcasting the event.
14. In light of submissions made by the BBC in previous cases and mentioned in the refusal notice the Commissioner considers the second element of journalism within the definition above (the editorial process) to be relevant to both questions in this case. In both instances the

information informs the editorial process of reviewing and planning for future programmes and therefore affects the creative output of the BBC.

15. In considering whether information is held genuinely for the purposes of journalism, the Commissioner has considered the following three factors with respect to each question:
- 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.

Request 1 – Editorial complaints

16. When considering the purposes for which the information was created, the BBC has explained that as part of its review process it will sift and review praise and criticism from its audiences. This is an important part of the BBC's process of creating and improving programmes and integral to this is the ability to maintain an independent view of criticism.
17. The complainant has argued that complaints are held for administrative and managerial purposes; however the Commissioner is satisfied that the BBC regard complaints as integral to the editorial process of judging and reviewing individual programmes and that complaints information is held for this purpose.
18. When considering the connection between the information itself and the programmes' content, the Commissioner accepts the BBC's argument that the ultimate purpose of the derogation is to provide a creative and journalistic space for programme makers to produce programmes free from the interference and scrutiny of the public.
19. The BBC has argued that it has a right to protect its journalistic and editorial independence by maintaining a 'private space' in which to produce its content. This includes the consideration of complaints it receives.
20. The BBC has explained that a 'private space' is important because, despite its obligation to be independent and impartial, many bodies, groups and individuals attempt to influence its output. This pressure takes many forms and has to be resisted by programme makers across the BBC.
21. It considers that if the content of individual criticisms were available for public scrutiny on a regular basis then programme makers would be under even greater pressure to respond to lobbies or vocal individuals

than they are already. They might be reluctant to make changes that reflect the views in the complaints in that they could be accused of "caving in to pressure" and other viewers would make judgements about the apparent impartiality of the programme.

22. Conversely, the BBC has argued that if it ignored complaints which it considered to be invalid or outweighed by other factors, it would be accused of ignoring public opinion, without the opportunity to explain the reasons for its editorial judgement. The BBC also believes that publication could lead to a "tit-for-tat" escalation of complaints, particularly from lobbying groups or political parties, as opponents competed with each other in terms of volume and strength of a complaint to the BBC.
23. The complainant has argued that impartiality and independence are best maintained through transparency and accountability; however the Commissioner is satisfied that the BBC has an obligation to defend its journalistic and editorial independence by maintaining a 'private space' in which to produce its programmes free from interference.
24. When assessing the users of the information, the Commissioner is satisfied that the information is held for the use of BBC programme makers for the independent review process regarding editorial complaints.
25. The Commissioner is satisfied that information concerning the number and nature of complaints about the coverage of the royal wedding is held by the BBC for the purposes of journalism and is therefore derogated information. Complaints made to the BBC are considered in the process of creating and improving programmes and integral to this process is the ability to maintain an independent and impartial position with respect to criticism. This reflects the Commissioner's conclusion in the recent decision notice for the case referenced FS50363611.

Request 2 – Cost of coverage

26. In light of submissions made by the BBC in previous cases, the Commissioner is satisfied that the BBC regards the decision as to how much resource to dedicate to a particular piece of BBC output to be a fundamental programme making decision. As explained in the decision notice for the case referenced FS50314106, the BBC has a fixed resource (the licence fee) and resource allocation goes right to the heart of creative decision making. The journalistic output of the BBC is therefore affected by budgetary constraints and operational information such as the costs of coverage of a national event such as a royal wedding will be held for this reason.
27. When considering the connection between the information itself and the programmes' content, the BBC has argued that information about costs

28. The BBC has referred to a recent decision notice (case reference FS50352659) which explained its position with regard to coverage of large public events such as the royal wedding. The decision notice was concerned with the cost of the papal visit in 2010; however the BBC explained that whilst the papal visit might appear to be a unique event, the costs incurred are not. It explained that large public events which are televised all involve the same sort of editorial decisions. These will be concerned with logistical scenarios, resource allocation, creative output and the costs incurred. The coordination of events of this nature is based on a 'blueprint' of coverage for any big story or event and information relating to costs will be used to inform future events especially where locations are the same. For example, Westminster Abbey was used for both the royal wedding and the papal visit.
29. The BBC therefore considers that the costs involved in covering the royal wedding relate to editorial decision-making. The allocation of funds is dictated by the editorial strategy and furthermore the planned costs will be affected by ongoing editorial decisions. In addition, any decision taken over costs on one programme has a direct impact on the creative scope of other programmes because more spent on one programme means less available for another.
30. In respect of the royal wedding, the records of the cost of covering that event would be held by programme makers to inform decisions on the content of future large scale public events.
31. The complainant has argued that the royal wedding is a unique event because it is unlikely to be repeated for several decades and because it is of immense constitutional significance. He therefore believes that information related to it is unlikely to be used in order to create future journalistic, artistic and literary output.
32. However, the Commissioner is satisfied that the expenditure involved in the coverage of such a large scale public event will be used to inform editorial and budgetary decisions for future events held on this scale. He is satisfied that information concerning the total cost to the BBC of broadcasting the royal wedding is information held for the purposes of journalism and is derogated information.

Conclusions

33. After considering all the information in this case, the Commissioner finds that the BBC genuinely holds the information for the purposes of

Reference: FS50404473

journalism. Therefore, the BBC was not obliged to comply with Parts I to V of the FOIA.

Right of appeal

34. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

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