

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2015

Public Authority: British Broadcasting Corporation (BBC)

Address: White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information about BBC employees. The BBC provided some information but has refused to comply fully with the request because it says to do so would exceed the appropriate limit, under section 12 of the FOIA.
2. The Commissioner's decision is that the BBC has correctly applied section 12 of the FOIA because it would exceed the appropriate limit to determine whether it held the remainder of the information requested at parts 1, 2 and 5 of the request, and any of the information requested at parts 3 and 4.
3. He also finds the BBC breached section 10 of the FOIA because it did not comply with section 1(1) within 20 working days.
4. The Commissioner does not require the BBC to take any further steps.

Request and response

5. On 9 October 2014, the complainant wrote to the BBC and requested information in the following terms:

"Across the UK:

- 1. How many employees have been sacked in each of the past 10 years?*

- 2. How many of these were sacked due to misconduct or alleged criminal behaviour? How many were allowed to resign?*
 - 3. How many employees are currently suspended pending investigation?*
 - 4. How many BBC employees have or are pursuing either injunctions or super injunctions?*
 - 5. Of the employees that have resigned or that were sacked in the past 5 years, how many were there and of that number how many were subject to a gagging clause?*
 - 6. It is rumoured that the BBC are aware of allegations of sexual misconduct. Across the regions are the BBC aware of any accusation or allegation, past or present, where the person is currently employed? If so please provide the numbers in each region and the broad nature of the allegation?"*
6. Following the Commissioner's intervention, the BBC responded on 19 February 2015. It provided some information in response to parts 1, 2 and 5 of the request and provided information within the scope of part 6. It refused to fully comply with the remainder of the request as it estimated that determining whether it held all the requested information would exceed the cost threshold of £450, in line with the provision under section 12 of the FOIA.
 7. Following an internal review the BBC wrote to the complainant on 14 April. It maintained its reliance on the provision under section 12. It apologised for the delay in completing the internal review and for responding to the original request outside of the statutory timescale of 20 working days. The BBC also suggested that it may be able to comply with a new request for a narrower category of information, and provided examples.

Scope of the case

8. The complainant initially contacted the Commissioner on 13 February because she had not received a response to her request. She subsequently told the Commissioner that she is not satisfied that the BBC is relying on section 12 and refusing to fully comply with parts 1, 2, 3, 4, and 5 of her request.
9. The Commissioner has considered whether the BBC has correctly applied section 12 to parts of the request, and whether it complied with its obligations under section 10.

Reasons for decision

Section 10 – time for compliance

10. Section 1(1) of the FOIA says that when a public authority receives a request, it must confirm or deny whether it holds the information, and if it does, the information must be communicated to the requester.
11. Section 10(1) of the Act says that public authorities must comply with section 1(1) within 20 working days of receiving the request.
12. In this case, the complainant submitted her request on 9 October 2014 and did not receive a response until 19 February 2015. This is a clear breach of section 10. The Commissioner does, however, note that the BBC went on to apologise to the complainant for the delay.

Section 12 – cost exceeds appropriate limit

13. Section 12 of the FOIA says that a public authority is not obliged to comply with section 1(1) of the Act if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The estimate must be reasonable in the circumstances of the case.
14. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the BBC. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
15. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16.
16. The BBC has told the Commissioner that it records employee information in two ways:

- An electronic HR/payroll system that holds generic key employee information, namely address, bank details, salary etc.
 - Employee personnel files, mostly electronic and containing scanned PDF documents relating to the employee (eg letters advising BBC employees of disciplinary matters, suspension, redundancy or garden leave).
17. The electronic personnel filing system can only be accessed by inputting an employee ID or employee name to access the employee personnel file. An electronic copy of every BBC employee's personnel file should exist, but the BBC says it cannot guarantee that all employee personnel files are held electronically and that some manual paper files do remain. In addition, there is no mandatory requirement at the BBC to electronically save a copy of every letter sent to an employee onto the relevant employee's personnel file, meaning that the BBC's records may be incomplete.
18. The BBC says its system is built on a Microsoft SharePoint platform. There is no 'Google' search facility that is capable of scanning across its system to pick up search terms such as 'suspension' or 'gagging order' to return the results the complainant expects should be readily available. It is, in effect, a repository for employee personnel files, and not an interactive system with searchable database capability.
19. The BBC has told the Commissioner that it also maintains a central database where it logs and monitors formal cases dealt with under its bullying, harassment, grievance and disciplinary policies. This is in cases where the complainant and/or the person against whom a complaint has been made are BBC employees (ie those engaged on continuing and fixed term contracts). The level of detail held on the database is very generic, consisting only of the individual's name, the reason for the disciplinary, the date the case was opened and the final outcome. The database does not constitute a comprehensive and detailed record of each case; rather, it is a means of logging and monitoring the number and type of cases under broad headings. The detail relating to individual cases is held separately and securely on employee personnel files and/or by local HR teams.
20. With regard to parts 1 and 2 of the request, the BBC did release to the complainant the information that, of the 270 people whose employment was terminated involuntarily during the last 10 financial years, 88 were dismissed for reasons relating to misconduct. The BBC has confirmed that there is no internal corporate reporting of the remainder of the information the complainant has requested.

21. To identify how many members of staff have had their employment terminated involuntarily in the last 10 years due to alleged criminal behaviour, the BBC has told the Commissioner that it would have to undertake the following tasks:
- Locate each of the personnel files for the 270 individuals identified in its original response
 - As explained above, this would involve inputting every individual's employee ID into the system to access their personnel file. (Given the age of some of the requested information, some of the files may have been destroyed in line with the BBC's records management policies.) It may also need to search paper files held locally by Divisional HR teams in those cases where electronic records do not exist.
 - The BBC would need to review each file to see if that individual faced allegations of criminal behaviour and whether it is recorded on file that this is the reason for that employee leaving the BBC. This would involve manually searching through each of the folders in the file and reviewing each document (largely scanned PDFs) to check for any relevant material.
 - To ensure a complete and accurate response, the BBC says its Investigations Service would also need to check its files for any relevant information. Not all allegations that result in dismissal would be investigated or recorded by the Investigation Service, but the Investigations Service may hold relevant information that is not recorded in the former employee's personnel file.
 - Extract the information from the various individual documents (eg onto an Excel spreadsheet).
22. The BBC has confirmed to the Commissioner that it would be unable to quickly determine how many members of staff resigned as a result of 'alleged criminal behaviour' because it does not routinely record the reason for an individual member of staff resigning from the BBC.
23. The BBC says that if it were to undertake the process outlined above, to locate, retrieve and extract the remainder of the information requested at part 2, if held, would take 23.5 hours. This is based on it taking five minutes to locate and review each of 270 files plus an additional hour to extract information from various individual documents onto an Excel spreadsheet.
24. Similar circumstances apply to parts 3 and 4 of the request. The BBC says it does not have a central database that records employees who

are currently suspended or who have or are pursuing either injunctions or super injunctions.

25. Periods of suspension are managed locally by the HR team, line managers and HR disciplinary case manager where appropriate. Records are held on individual personnel files and/or by local HR teams in accordance with any business need. In order to find out the total number of employees currently suspended, the BBC says it would be necessary to check with every local HR team. Consequently, each HR team would need to review the personnel files of every employee in each team to search for the requested information. This would involve manually searching through each folder in the file, reviewing any documents that appeared to be relevant (such as a letter to the employee advising them that they have been suspended). As there is no mandatory requirement for such letters to be electronically saved to the file, the BBC says that any figure it could provide may not be accurate.
26. As noted above, the BBC maintains a central database where it logs and monitors formal cases dealt with under its bullying, harassment, grievance and disciplinary policies. Although a record of some suspensions may be held on the central database, it is not mandatory for local HR teams to enter details of suspensions onto this central system, so the BBC says that any data retrieved would be patchy at best, and would not give the complainant a full and accurate picture of the number of staff members who are currently suspended pending an investigation.
27. The BBC has told the Commissioner that it is not possible for it to run a date field search across the whole of this database in order to pull up details of those BBC employees who are 'currently suspended pending investigation'. Furthermore, the BBC's central database does not record the duration of an employee's suspension. A consequence of this is that even if the information regarding the number of employees currently suspended was held on the central database, the BBC would need to cross reference this information to individual personnel files to determine the actual dates of suspension and whether or not the suspension was current at the time of the request. The majority of cases on the database will have been concluded and so the individuals involved (even if they had been suspended from duty during the course of the formal procedure) are likely to have either returned to work or left the BBC as a result of the underlying disciplinary issue.
28. The BBC has drawn the Commissioner's attention to his decision in [FS50518687](#), which was a broadly similar complaint concerning the number of BBC employees currently suspended, on gardening leave or absent from work due to sickness. In that case the Commissioner

decided section 12 applied to particular elements of the request because of the number of employee personnel files that would need to be reviewed, in the absence of a central database. The BBC says that the way it records information about its employees has not changed significantly since the earlier complaint.

29. In the case of injunctions or super injunctions, the BBC says that any member of staff pursuing either of these is likely to be pursuing it privately, so that the BBC would not hold any relevant information about those cases. It says that if it was aware of any such injunction, this information would be held by the Editorial Legal Group in cases in which the BBC has acted. Or it could be held on the individual's personnel file. To determine whether it held information about injunctions and super injunctions, the BBC says it would have to review its records of injunctions and contact each local HR team and ask them to review the personnel file of every current employee – currently 19,000 files.
30. The BBC estimates that to determine whether it holds information within the scope of parts 2 and 3 of the request would take 226 days on the basis of it taking five minutes to review each of 19,000 files ($19,000 \times 5$ minutes = 95,000 minutes = 1,583.22 hours = 226 days (based on 7 hours per day).
31. With regard to part 5 of the request, in its original response to the complainant, the BBC explained that 154 employees had their employment terminated involuntarily during the last five financial years (Apr 09 – Mar 14). It had also explained that from May 2013 BBC contracts and settlement agreements no longer contain non-derogatory statement clauses. This means that the BBC would only need to review any agreements drafted between 1 April 2009 and 2 May 2013. According to its records, the BBC says that approximately 3,650 staff left the BBC either voluntarily or involuntarily during this period.
32. To determine whether it held all the information requested at part 5, the BBC says it would need to manually search through the folders in each file to identify any relevant agreements that may have been saved to the file. It would then need to review those agreements to see if they contain clauses of the type requested by the applicant. It says that to undertake this work would take 43.45 days ($3,650 \times 5$ minutes = 18,250 minutes = 305 hours = 43.45 days (based on 7 hours per day).
33. The BBC has estimated that to comply fully with all parts of the request would take 270 days in total (23.5 hours + 226 days + 43.45 days). The Commissioner has considered the BBC's submission and his previous decision in FS50518687. He is satisfied that the BBC's estimations are sensible and credible and that complying with the request would exceed the appropriate limit of 18 hours. Consequently,

he has concluded that the BBC has correctly applied section 12 to these parts of request.

34. As mentioned, under section 16 of the FOIA, public authorities are obliged to help a requester refine their request so that it could be dealt with within the cost and time limit. The BBC says that in its response to the complainant, it said that due to the way it holds information, it did not believe there was a meaningful way for the complainant to refine her request, as even determining if it held relevant information concerning one BBC Division would still be likely to exceed the time limit. In its internal review, the BBC also concluded that it had provided assistance in so far as it would be reasonable to do so, given the circumstances. It suggested to the complainant that if she would like to submit a new request, she could focus on a particular question and perhaps a narrower time frame or Division within the BBC.
35. The BBC rightly notes that section 16 says an authority must offer advice and assistance 'so far as it would be reasonable to expect the authority to do so'. Given the circumstances of this case, the Commissioner is satisfied that the BBC complied satisfactorily with section 16.

Right of appeal

36. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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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