

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 March 2015

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

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

### Decision (including any steps ordered)

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1. The complainant requested the cost of a joint celebration in January 2015. The BBC explained the information was covered by the derogation and excluded from FOIA.
2. The Commissioner’s decision is that this information was held by the BBC for the purposes of ‘journalism, art or literature’ and did not fall inside FOIA. He therefore upholds the BBC’s position and requires no remedial steps to be taken in this case.

### Request and response

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3. The complainant wrote to the BBC on 13 January 2015 and asked:

*"The Spectator reported yesterday (<http://blogs.spectator.co.uk/steerpike/2015/01/no-dry-january-for-the-bbcs-finest/>) that a leaving party was held at the One Great George Street venue for Andrew Marr Show editor Mr Barney Jones. The article states "Most 'leaving dos' in journalism involve a few beers down the Dog and Duck but Aunty was an extremely kind benefactor, providing fine wines and canapés as well as music from Nick Lowe across three of the most expensive function rooms in Westminster. Three cheers for the licence fee!".*

*Assuming the Spectator's article to be accurate (and please tell me if it is not), under the transparency afforded to me by the Freedom of Information Act I would like, please, a breakdown of the costs*

*incurred by the BBC for this event. The breakdown need be no more detailed than listing, for example, the amounts spent on drinks, food, room hire, entertainment, transport and accommodation.'*

4. The BBC responded on 4 February 2015 and provided some information. The event reported in the Spectator was a '*joint celebration of the twentieth anniversary of Breakfast with Frost, the Andrew Marr Show and staff leaving parties.*' It then explained that it believes that the information requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature.'
5. 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 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 further information in response to the request for information.

## Scope of the case

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6. On 4 February 2015 the complainant contacted 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, '*presumably because the person concerned was a TV programme editor. I am left wondering if this exemption would have applied if I had, for example, requested details of a leaving party held for a senior engineering manager.*'

## Background

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7. The BBC provided the following information to the complainant.  
  
*'The event reported in The Spectator was a joint celebration of the twentieth anniversary of Breakfast with Frost, the Andrew Marr Show and staff leaving parties. The BBC will only contribute to leaving parties/drinks when someone leaves the BBC after a period of service of at least five years and then only with the prior approval of the appropriate Divisional Finance Director. The BBC's total contribution (including VAT and service) to such events will*

*never exceed £200 where the length of service was between five and 10 years and for over 10 years' service the maximum contribution is £500. Where a number of people are leaving consideration is given to holding a single event to minimise the total cost to the BBC. '*

8. The BBC provided additional background information to the Commissioner:

*'The principle purpose of the Frost/Marr event was the celebration and promotion of The Andrew Marr Show and a celebration of the Breakfast with Frost Show. The event was used by the BBC as a promotional and networking forum with a significant number of the invitees enjoying a high profile in the world of politics, the arts, music, publishing and journalism. '*

*'The costs of Frost/Marr event were authorised by the BBC's Director of News. The budget allocated to these costs is used by 'News' to exclusively support its activities with regard to journalism. This includes 'News' related events requiring additional funding support from the BBC's 'News' Division. '*

9. The BBC submitted therefore *'that the budget for staging an event to directly promote the BBC's broadcast output is intimately connected to the BBC's creative output.'*

## **Reasons for decision**

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

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

11. This means that the BBC has no obligation to comply with part I to V of the Act where information is held for 'purposes of journalism, art or literature'. The Commissioner calls this situation 'the derogation'.
12. 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. The Commissioner's analysis will now focus on the derogation.

13. The scope of the derogation was considered by the Court of Appeal in the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715, and later, on appeal, by the Supreme Court (*Sugar (Deceased) v British Broadcasting Corporation* [2012] UKSC 4). The leading judgment in the Court of Appeal case 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)

14. The Supreme Court endorsed this approach and concluded that if the information is held for the purpose of journalism, art or literature, it is caught by the derogation even if that is not the predominant purpose for holding the information in question.
15. In order to establish whether the information is held for a derogated purpose, the Supreme Court indicated that there should be a sufficiently direct link between at least one of the purposes for which the BBC holds the information (ignoring any negligible purposes) and the fulfilment of one of the derogated purposes. This is the test that the Commissioner will apply.
16. If a sufficiently direct link is established between the purposes for which the BBC holds the information and any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to FOIA.
17. The Supreme Court said that the Information Tribunal's definition of journalism (in *Sugar v Information Commissioner* (EA/2005/0032, 29 August 2006)) as comprising three elements, continues to be authoritative

*"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,*
- \* 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."*

18. However, the Supreme Court said this definition should be extended to include the act of broadcasting or publishing the relevant material. This extended definition should be adopted when applying the 'direct link test'.
19. The Supreme Court also explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.
20. The complainant's request for the cost of this event is well within the expected remit for the purposes of creating content and producing output.
21. The BBC argued 'that the financial information requested in this case exists primarily in support of the BBC's creative activities in relation to journalism, namely the staging of an event to promote The Andrew Marr Show and to celebrate the 20<sup>th</sup> anniversary of Breakfast with Frost and The Andrew Marr Show. The organisers of the Frost/Marr event use this financial information on a management and editorial level to determine the cost of staging similar large scale events to promote the BBC's broadcast output in the future. The financial information generated (albeit, in itself not 'journalistic') clearly supports the delivery of programme content, in this instance, the marketing and promotion of current and future broadcasts of The Andrew Marr Show.'
22. The decision notices for the case references [FS50488408](#) and [FS50206742](#) are relevant to this request as they also considered requests for information on marketing costs. The refusal of the BBC to provide the information about marketing, promotional and publicity activity was upheld by the Commissioner as he was satisfied that it was held for journalistic purposes and therefore fell under the derogation. The Commissioner accepted that there was

a clear link between the BBC's creative output and any activity to promote such output.

23. The BBC provided further evidence to show that the main purpose of this event in January 2015 was the celebration and promotion of the two shows. The Commissioner accepts that the principle purpose in this case was not as described in the Spectator but an event to celebrate the 20<sup>th</sup> anniversary of the Frost/Marr shows and to promote The Andrew Marr show to potential guests of the show.
24. The BBC explained that a 'tertiary purpose of the event was to mark the departure from the BBC' of the Editor and the 'BBC's total contribution to the cost element of Mr Jones's leaving party was made in accordance with BBC policy.'
25. Any decision taken on costs has a direct impact on the creative scope for programmes because more money spent on one area or one programme means less available for another. The Commissioner recognises that the decision to promote these two shows relates to editorial decisions about the content that the BBC wants to offer its customers and this in turn relates to the overall editorial decision making process and resource allocation. It is therefore intimately linked to the corporation's output and it is clear that the Commissioner has no jurisdiction in this matter.
26. The Commissioner has accepted on a number of occasions (such as in case reference [FS50314106](#) ) that the BBC has a fixed resource in the Licence Fee and resource allocation goes right to the heart of creative decision making. The Commissioner is satisfied that the same rationale applies in this case.
27. For all of the reasons above, the Commissioner is 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 FOIA.

## Right of appeal

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

29. 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.
30. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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