

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2016

Public Authority: The British Broadcasting Corporation ('the BBC')

Address: Broadcast Centre
White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant requested information about climate change meetings. The BBC explained the information was covered by the derogation and excluded from FOIA. 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.

Requests and responses

2. On 10 May 2016 (received 16 May, reference RFI20161018), the complainant requested information in the following terms:
'My main concern is that I have now written twice, once in 2014 and again this year in an attempt to establish what meetings took place between Peter Lilley, Nigel Lawson and BBC personnel, either editor or managers over climate change and/ or the environment. I would like to know how many meetings took place, when they occurred, who attended, what was discussed and whether any minutes were kept I would also like to know whether this had any impact on BBC policy and if not why were the meetings held in the first place.'
3. On 2 June the BBC responded and explained that it did not believe that the information was caught by FOIA because it was held for the purposes of 'art, journalism or literature'.

4. 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.
5. However, the BBC volunteered some information outside of FOIA concerning meetings held in 2012, 2013 and 2014:

Tuesday, 4th December 2012 at the House of Lords

Peter Lilley MP with David Jordan , Director , Editorial Policy and Standards , BBC , Philip Abrams, Senior Adviser , BBC Editorial Policy and David Shukman, BBC Science Editor.

Wednesday, 1st May 2013 at the House of Lords

Lord Lawson, Benny Peiser , Director, Global Warming Policy Foundation, David Whitehouse Science Editor , GWPF with David Jordan and Philip Abrams , BBC Editorial Policy and Standards

Wed. 4th December 2013 at Queen Anne's Gate

Lord Deben, David Kennedy , Chief Executive 'The Committee on Climate Change' with David Jordan and Philip Abrams, BBC Editorial Policy .

Mon. 30th June 2014 at Portcullis House

Caroline Lucas MP. Joan Walley MP, Andrew Simms , New Economics Foundation , Tom Burke , Richard Black with David Jordan and Philip Abrams, BBC Editorial Policy .

6. The purpose of the meetings were to

'discuss BBC Editorial policy and climate change science. No minutes were kept.

The BBC regularly meets with individuals and groups with a range of perspectives and contrasting views, which informs wider understanding, but we are careful to ensure that such meetings do not improperly influence editorial policy.'

7. On 16 July 2016 (received 25 July, reference RFI20161398), the complainant sent a further information request to the BBC about the two meetings held in December 2012 and May 2013:

'I would like to know why these meetings were arranged, who approved them, why they were held at the House of Lords rather than BBC premises and why no minutes have been made available.'

8. On 27 August 2016 the BBC responded that it did not believe that the information was caught by FOIA because it was held for the purposes of 'art, journalism or literature'. The BBC did not volunteer any further information on climate change issues.
9. On 31 August (received 2 September) the complainant wrote to the Commissioner. He argued that *'the meetings were held for political purposes, something that can be confirmed by establishing who requested the meetings initially, what correspondence took place and if there are no minutes available why it was decided not to keep minutes.'*
10. The Commissioner's initial view was that the requested information is derogated because it is held for the purposes of the BBC's journalism and on 21 September, invited the complainant to withdraw his complaint. The complainant preferred to progress to a decision notice disputing the derogation and arguing that *'the meetings were a political lobbying exercise and nothing to do with accurate journalism or the science of climate change.'*
11. On 28 September the Commissioner invited the BBC to provide its more detailed arguments about why it believed that the information requested falls within the derogation.

Scope of the case

12. The Commissioner considers the scope of the case is to determine if the requested information (from the second request dated 16 July) is excluded from FOIA because it would be held for the purposes of 'journalism, art or literature'.

Background

13. The BBC stated that information about why these meetings were arranged is published by the House of Commons Science and Technology Select Committee.
14. On 28 February 2013 the Committee launched an inquiry to find out *'the level of understanding amongst the public of climate change ...and the role of the media and government in doing this.'* (House of Commons Science and Technology Committee, Communicating climate science, Eighth Report of Session 2013–14, 26 March 2014, <https://www.publications.parliament.uk/pa/cm201314/cmselect/cmsctech/254/254.pdf>)
15. As part of its inquiry, David Jordan, the BBC's Director of Editorial Policy and Standards, refers specifically to his meetings with Lord Lawson and Peter Lilley MP which are the subject of this complaint:

(oral evidence in Committee) 'We are engaged with everybody. There are people in this room who know that only a few weeks ago I had a long meeting with Lord Lawson about his view of climate change. Not that very long ago, I had a long meeting with Peter Lilley about his view about of climate change. We have long meetings with scientists who take different views about climate change and what is going on in the world, and whether there is or is not a standstill in global temperatures. We are constantly monitoring all of that with politicians, scientists and everybody else who has a view.' (The minutes of evidence are available: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmsctech/254/130717.htm>)

(and as written response to follow up questions) 'My meetings with Lord Lawson and Peter Lilley MP provided an opportunity for me to explain the BBC's approach to impartiality in relation to climate change and how the BBC's Editorial Guidelines apply to climate science coverage. As part of my role as Director of Editorial Policy and Standards, I meet a wide range of people in order to explain the BBC's approach to editorial matters though I am not aware of having met anyone else specifically to discuss accusations of bias in relation to climate change.' (The BBC's written evidence has been published: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmsctech/254/254we22.htm>)

Reasons for decision

16. 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."

17. 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'.
18. 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.
19. 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)*
20. 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.
21. 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.

22. 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.
23. 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." 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'.
24. 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.
25. The Commissioner adopts a similar definition for the other elements of the derogation, in that the information must be used in the production, editorial management and maintenance of standards of those art forms.
26. In this case, the information requested concerns the arrangements for meetings about climate change. The BBC argues that there is a

sufficiently direct link between the purposes for which the information is held and the creation of its output.

27. As background, the BBC stated that it is obliged to *'...do all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all relevant output'* and that the BBC's Editorial Guidelines go further than this, applying the obligation of *'due impartiality'* to all its output. (<http://www.bbc.co.uk/editorialguidelines/>)
28. In 2010 the BBC Trust launched a review of the impartiality and accuracy of BBC science coverage. In the published findings of the report, Professor Jones expressed concern about the appropriate application of editorial guidelines on due impartiality in science coverage. The BBC reported back to the Trust in November 2012 and July 2014 on the progress it had made in addressing the deficiencies identified in the report.
29. The Trust published its conclusions on the actions taken by the BBC (http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/science_impartiality/trust_conclusions.pdf) in 2012 and 2014. With respect to impartiality:

'The BBC has a duty to reflect the weight of scientific agreement but it should also reflect the existence of critical views appropriately. Audiences should be able to understand from the context and clarity of the BBC's output what weight to give to critical voices.'
30. The meetings which are the subject of this complaint took place between the publication of the 2012 and the 2014 follow up reports. As set out in the BBC's written evidence to the Select Committee (see paragraph 15 above), the purpose of the meetings was to explain the BBC's approach to impartiality in relation to climate change and how the BBC's Editorial Guidelines apply to climate science coverage.
31. This is supported by the attendees from the BBC who were responsible for the development and implementation of the BBC's editorial policy and standards: *'It is also within their remit to explain to external audiences (such as MPs and members of the House of Lords) how the Editorial Guidelines apply to the BBC's climate science coverage.'*
32. The BBC states that its position is that the disputed information falls within the third element of the definition of journalism ie "the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness)".
33. The BBC also argues that the information is still relevant as the BBC's reporting of science continues to be a contentious issue, and especially

in areas of intense debate and divided opinion such as climate change. The disputed information is therefore neither historic nor no longer held for the purposes of journalism.

34. In response to the complainant's concern that the meetings were a '*political lobbying exercise*' the BBC has explained to the complainant that the BBC regularly meets with individuals and groups with a range of perspectives and contrasting views but the BBC is careful to ensure that such meetings do not improperly influence editorial policy.
35. The Commissioner has previously accepted in a decision notice from 2009 ([FS50176386](#)) that information relating to a seminar on climate change (agenda, attendees and minutes) was outside the scope of FOIA and this was upheld by the First Tier Tribunal (Information Rights). (http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i373/20121108_Ddecision_EA20120118.pdf)
36. Having applied the approach to the derogation set out by the Supreme Court and the Court of Appeal, which is binding, the Commissioner is satisfied that the requested information falls under the definition of journalism and is therefore derogated. The Commissioner sees no basis for deviating from the approach as the complainant argues; the information clearly falls within the derogation. The derogation is engaged as soon as the information is held by the BBC to any extent for journalistic purposes.
37. In conclusion, and for all of the reasons above, the Commissioner finds that the information falls within the derogation and that the BBC is not obliged to comply with Parts I to IV of the FOIA in respect of the complainant's request.

Right of appeal

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

39. 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.
40. 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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