

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 November 2017

**Public Authority:** British Broadcasting Corporation (BBC)  
**Address:** Room BC2 A4 Broadcast Centre  
White City  
Wood Lane  
London  
W12 7TP

### **Decision (including any steps ordered)**

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1. The complainant has requested correspondence between the Director General and the Secretary of State for Culture, Media and Sport. The BBC has failed to fully respond to this request.
2. The Commissioner has decided that the BBC breached section 17(1) and (3) of the FOIA because it failed to provide the complainant with the initial refusal notice within 20 working days and has failed to provide a final decision in relation to its public interest considerations within a reasonable time.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a final decision on the public interest considerations in compliance with section 17(3) FOIA
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. On 15 May 2017 the complainant made the following request for information:

"Please note that I am only interested in information which relates to the period 15 May 2016 to the present day.

Please note that the reference to the Secretary of State should include the Secretary of State him/herself as well as their private office.

Please note that the reference to the Director of General should include the DG himself as well as his private office.

1. During the aforementioned period has the Director General exchanged correspondence and communications with the Secretary of State for Culture, Media and Sport.
  2. If the answer is yes can you please provide copies of this correspondence and communications including emails and the transcripts of any telephone conversations. Please note that I am interested in receiving both sides of the correspondence and communications. In accordance with ICO guidance please do include details of relevant documents which may have been subsequently destroyed."
6. On 12 September 2017, the BBC provided the complainant with a partial response. It provided the complainant with some information but explained that it was still considering an additional six letters held, which may be exempt from disclosure under Section 36 and/or Section 43(2) of the Act. It said that these are both qualified exemptions, which required further time to consider the public interest test.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 31 August 2017 to complain about the way his request for information had been handled as at this stage the BBC had still not provided him with a response.
8. The Commissioner has considered whether the BBC dealt with this request in accordance with its obligations under section 17(1) and (3) FOIA.

## **Reasons for decision**

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### **Section 17 – refusing a request**

9. Section 10(1) of the FOIA says that public authorities should comply with section 1(1) as soon as possible and within 20 working days.

10. Section 17(1) of the FOIA says that if a public authority is relying on an exemption it must give the applicant a notice which: (a) states that fact; (b) specifies the exemption in question and (c) states why the exemption applies. It must issue the notice within 20 working days.
11. In this case, the complainant submitted his request on 15 May 2017 and the BBC provided a partial response on 12 September 2017 that informed the complainant that the information he had requested was being withheld and under which exemptions (section 36 and 43 FOIA). However, although in this notice the BBC informed the complainant that exemptions applied to some of the information he had requested, it said that it required further time to consider the public interest test.
12. Under section 17(3) of the FOIA an authority must provide the applicant with a final decision on its public interest test considerations either in the notice under 17(1) or in a separate notice given at such time as is reasonable in the circumstances.
13. The FOIA does not set a specific limit on the amount of additional time the public authority can take to consider the test, only stating that the notice communicating its final decision must be provided within 'such time as is reasonable in the circumstances'.
14. The Commissioner's position is that a public authority should take no more than an additional 20 working days to consider the public interest, which means that the total time spent dealing with the request should not exceed 40 working days.
15. The BBC has not yet provided the complainant with a final decision.
16. The Commissioner considers that the length of time the BBC is taking to consider the public interest test in this case is unreasonable in the circumstances and a breach of section 17(3). It also breached section 17(1) FOIA as it failed to provide the initial refusal within the statutory time for compliance.

## Right of appeal

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17. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**