

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2018

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 on the identity of a Commissioning Editor in the 1990s. The BBC confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that the BBC does not hold any further information in this case. The Commissioner does not require the BBC to take any steps.

Request and response

2. On 8 November 2017 the complainant requested the following information:

'A). I have requested that the BBC furnishes me with the identity of the "Commissioning Editor" who claimed the format as his own for the show broadcast as "The Great British Antiques Hunt" twenty years or so ago. (The show was presented by Jilly Goolden).

B). Also the "Commissioning Editor" who worked for BBC2 at the same time. I cannot recall his name for the life of me. (There may be more than one, if so, I would like their names as well, males only though.) The reasons for this request become obvious if you read the original letter to the D.G.'

3. On 6 December 2017 the BBC responded that the information was held for derogated purposes and fell outside of FOIA. The issues were referred to the Commissioner.
4. The Commissioner invited the complainant to withdraw his case on 8 January 2018 as it was her opinion that the requested information was held for the purposes of journalism, art and literature and that the BBC was correct in its refusal to disclose this information.
5. However, the complainant declined to withdraw his case and wrote to the Commissioner on 11 January 2018 to reiterate the fact that he did not believe that his request was held for the purposes listed in Schedule 1. He argued *'that to use the Act to shield the perpetrator of a crime is wrong; both in principle and effect'*.
6. In response to the Commissioner's enquiries, the BBC reviewed their position and amended their response from citing the derogation to stating that it did not hold the information. The BBC informed the complainant of this on 9 February 2018.

Scope of the case

7. The Commissioner has considered that the scope of the case is whether the BBC has complied with Section 1 of the FOIA.

Reasons for decision

8. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
9. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

11. As is the practice in a case such as this, the Commissioner asked the BBC a number of questions to confirm/establish if further information is held.
12. In response to the Commissioner's questions about the location of the information, the BBC confirmed that it did not hold any recorded information falling within the scope of the request:

'A search was conducted of the records held by the relevant division of the BBC, BBC Content, as well as in the records held by BBC Archives regarding the relevant programme, The Great British Antiques Hunt. I can conclude that this was a significant search of relevant records and confirm that the BBC does not hold the requested information.'

'In responding to the complainant's argument to the ICO, I understand that the BBC's intellectual property litigation team wrote to the complainant on 19 December 2017 regarding an unfounded assertion of intellectual property rights by him over the programme.'

13. The Commissioner asked the BBC a number of questions to establish what searches had been carried out for information falling within the scope of the request.
14. The BBC explained *'BBC Archives is the appropriate team to conduct a search of BBC records. Their search yielded files on the relevant programme which were reviewed by BBC Legal in order to respond to [redacted name of complainant]'s unfounded intellectual property claim and to respond to the ICO's correspondence. The requested information was not identified in the records.'*
15. The BBC also explained that *'the records held by BBC Archives are held in paper form. There is no evidence to suggest that any electronic records would have been held. This is because of the age of the documents which when produced in the early 1990s were only held in paper form. There is no evidence to suggest they were later digitised.'*

BBC Archives has a database that contains references to all their records – both manual and electronic. Archives searched this database by searching for variants of the programme name, 'The Great British Antiques Hunt'. This yielded records that were checked but did not include references to a commissioning editor.'

In relation to the request for the identity of the BBC2 commissioning editor at the time of the programme's inception, this information is not held by the BBC. Archives confirmed to BBC Legal that in 1991, only telephone lists of BBC staff were archived. Without the name of the individual, the BBC cannot extract the requested information. However

the Archives team searched the database for variants on 'commissioning editor' and 'BBC2'. This did not yield results.'

16. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. The BBC answered: *'it is possible that the requested information about the identity of the commissioning editor was destroyed after 3 years, in keeping with the BBC's Corporate Retention Schedule. The BBC's Corporate Retention Schedule provides that commissioning records should be destroyed after 3 years.'*
17. Having considered the BBC's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any further recorded information within the scope of the request.
18. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.
19. As the Commissioner's decision is that the information is not held, the Commissioner does not require the BBC to take any steps.

Other matters

20. The Commissioner reminds the BBC to carefully consider the FOI request before deciding whether it is appropriate to apply the derogation. It may be, as in this case, that the information is not held and that the complainant should have been informed of this in the BBC's initial refusal letter.

Right of appeal

21. 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>

22. 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.
23. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF