

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2018

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

Address: BC2 A4 Broadcast Centre
White City
201 Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant requested information about the 1st Lord Mountbatten of Burma. The BBC disclosed the information for the first part of the request but confirmed that it did not hold any further information for the second and third parts of the request. The complainant considered that more information must be held. The Commissioner's decision is that the BBC does not hold any further information within the scope of the request in this case. The Commissioner does not require the BBC to take any steps.

Request and response

2. On 27 May 2018 the complainant requested the following information:

'I am writing a biography of the 1st Lord Mountbatten of Burma.

I understand he was interviewed by the BBC – probably by General Features in Kensington House in 1977 and 1978 – for a programme to appear on his death.

I request all information the BBC has relating to the interview(s) and programme, including, without limitation, (1) details of transmission, (2)

any interview material that was not broadcast, and (3) the reasons for any such cuts.'

3. On 8 June 2018 the BBC confirmed that it felt that the information was held for derogated purposes and fell outside of FOIA. The issues were referred to the Commissioner on 14 June 2018 as there is no requirement for an internal review if the information is held for derogated purposes.
4. The complainant argued '*archived material would not fall within the protection afforded by the definition*' in FOIA and '*disclosure of material that is held only in the archives will not be likely to interfere with or inhibit the BBC's broadcasting functions.*'
5. The Commissioner invited the complainant to withdraw his case on 29 June 2018 as it was her initial 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.
6. However, the complainant declined to withdraw his case and wrote to the Commissioner on 29 June 2018 to reiterate the fact that he did not believe that his request was held for the purposes listed in Schedule 1.
7. On 5 September, the Commissioner asked the BBC to revisit the request.
8. On 26 September the BBC wrote to the complainant as it had revisited the request and provided further information with a view to facilitating the informal resolution of the complaint. The BBC had identified the request as relating to the obituary programme 'A Man of Our Times'. In summary, the BBC letter disclosed information relating to the first part of the request and stated that information relevant to parts 2 and 3 of the request is not held.
9. The BBC noted that if held, this material (parts 2 and 3) would be derogated as it is relevant to the BBC's editorial processes: '*BBC Archives has undertaken extensive searches and confirmed that interview material with Lord Mountbatten for the obituary programme, that was not broadcast, is not held.*'
10. The BBC also noted that the request was broadly worded and captured 'all information' relating to the obituary programme. The BBC confirmed that all written material that exists that may be relevant is held in the BBC's Written Archives Centre. The complainant has access to the Centre via the researcher facility. The BBC advised that, under section 21 of FOIA, information that is reasonably accessible to a requester otherwise than under the FOIA is exempt.

Scope of the case

11. On 27 September the complainant contacted the Commissioner as he considered that more information must exist. He disputed that the requested information (parts 2 and 3) is not held:

'I'm encouraged that the BBC have backed down and accept the discarded material is archival rather than operational.

The BBC have suggested the programme was 'A Man of Our Times: Lord Mountbatten' - of which I am well aware - but several programmes were put together in the late 1970s on Mountbatten and I have it on good authority that it may have been another programme in which Buckingham Palace intervened. For example, Ludovic Kennedy interviewed Mountbatten before his death for a six-part programme 'Lord Mountbatten Remembers' which was broadcast in November 1980.

My FOIA request was not limited to that programme but covered all interviews of Lord Mountbatten by or for the BBC in connection with any programme intended for broadcast after his death.

It is not true as the BBC claim in clause 13 they hold no interview material which was not used. The various scripts for 'A Man of Our Times' are at BBC Written Archives.'

12. The Commissioner has considered that the scope of the case, with regard to section 1(1) of the FOIA, is whether or not the BBC holds additional, relevant information that it has not disclosed to the complainant.
13. As the information for part 1 (details of transmission) has been disclosed and the complainant has not disputed that the potential written information is available to him, the Commissioner will focus her investigation and decision on part 2 (any interview material that was not broadcast) and part 3 (the reasons for any such cuts) of the request for a programme to appear on the death of the 1st Lord Mountbatten of Burma.
14. As part of its submissions to the Commissioner, the BBC identified and disclosed additional material in relation to part 1 of the request:

'Since sending our letter to the complainant, it has come to light that information relating to a radio transmission of the obituary programme, which was provided by Radio & Music HQ, was omitted in error from the letter. We sincerely apologise for this. We provide the following details as full disclosure of information relevant to part 1 of the request.

The radio transmission of the programme was on 27 August 1979; the same date as the initial transmission of the programme on television. The BBC Radio Digital Archive system, 'Discovery', does not record the details of the radio channel. In addition, Discovery does not record any information about any subsequent radio transmissions of the programme.

Together with the information provided to the complainant in our letter dated 26 September 2018, this is now a full disclosure of all information the BBC holds relating to part 1 of the request.'

Reasons for decision

Section 1 of the FOIA – Information held/ not held

15. 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.
16. 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.
17. 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).
18. 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.
19. In response to the Commissioner's questions about the location of the information, the BBC confirmed that it did not hold any further recorded information falling within the scope of the request.
20. The BBC explained that the complainant appears to have asserted that the scope of his request be interpreted more broadly: '*all interviews of Lord Mountbatten by or for the BBC in connection with any programme intended for broadcast **after** his death*'. (Emphasis added by the Commissioner. See paragraph 11 above)

21. The BBC stated that the terms of the request were set out with specific reference to a programme intended to appear **on** the death of Lord Mountbatten: information '*for a programme to appear on his death*'. The BBC identified the obituary programme, 'A Man of Our Times: Lord Mountbatten', as relevant to the scope of the request. The programme was recorded to appear on the death of Lord Mountbatten and was first transmitted on 27 August 1979, on the death of Lord Mountbatten.
22. However, the BBC confirmed that BBC Archives had carried out searches for any un-broadcast interview material with Lord Mountbatten for the programme 'Lord Mountbatten Remembers' (as cited by the complainant, see paragraph 11 above) and confirmed that un-broadcast interview material with Lord Mountbatten for this programme is not held. The BBC letter to the complainant (26 September, paragraphs 8-10 above) focused on the obituary programme, given that this was the programme that was relevant to the request.
23. The Commissioner accepts that the BBC was correct to focus its searches for information '*for a programme to appear on his death*' as specified in the information request.
24. 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.
25. The BBC explained that it's Information Rights team had liaised with BBC Current Affairs, the responsible programme area for '*A Man of Our Times: Lord Mountbatten*' on television; Radio & Music HQ which holds information about the radio transmission of this programme; as well as BBC Archives and the Written Archives Centre, to determine whether any un-broadcast interview material with Lord Mountbatten, recorded for the purposes of the obituary programme, is held.
 - BBC Current Affairs carried out a search of the electronic archives system, 'Infax'. Infax was phased-out in 2012 and is no longer updated. However, the system still holds relevant information on programmes made prior to 2012, including the type of holdings; format of the holdings; and whether any holdings have been provided to the BBC Archives library.
 - BBC Current Affairs carried out a search of Infax using the search term 'A Man of Our Times: Lord Mountbatten'. This search returned results only for the broadcast version of the programme, held on video tape and film. It did not contain any information indicating that un-broadcast interview material with Lord Mountbatten ever existed or was provided to BBC Archives.

- BBC Current Affairs also carried out a search of the new archives system, 'Fabric', to which existing pre-2012 data from Infax was migrated. Again, this only returned search results for the broadcast version of the programme.
 - BBC Archives also carried out a search of Infax and Fabric using the search term 'A Man of Our Times: Lord Mountbatten'. In particular, they advised that both systems only record details of the broadcast programme. BBC Archives advised that if any un-broadcast raw material is held for a programme, this would be listed under the programme entry under 'Related Assets'. BBC Archives confirmed that there are no records under 'Related Assets' for the obituary programme, confirming that the BBC does not hold any un-broadcast parts of the interview recorded with Lord Mountbatten for the purposes of this programme.
 - It is also relevant that 'A Man of Our Times: Lord Mountbatten' was originally recorded on film, and then later transferred to video-tape. Therefore, if any un-broadcast material of the interview with Lord Mountbatten existed, these would be held in physical cans of film or as video-tape. BBC Archives have checked the physical holdings and have confirmed that they do not hold any films or video tape of un-broadcast recordings of the interview with Lord Mountbatten for the obituary programme.
 - In relation to the radio transmission, Radio & Music HQ carried out a search of the Digital Radio Archive system, 'Discovery', using the search term 'Mountbatten'. This search only returned a result for the broadcast version of the obituary programme on radio. Therefore, Radio & Music HQ also advised that un-broadcast material from the interview with Lord Mountbatten for this programme is not held.
26. In summary, the BBC confirmed that *'there is no information to suggest that parts of the interview recorded with Lord Mountbatten for the purposes of the obituary programme were un-used or un-broadcast in the first instance, or if editorial cuts had in fact been made, that the un-broadcast content was ever retained. BBC Current Affairs, Radio & Music HQ and BBC Archives have confirmed that such material is not held currently.'*
27. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed.
28. The BBC answered that the search results did not indicate that holdings for un-broadcast interview material with Lord Mountbatten for the

purposes of the obituary programme was ever held or provided to BBC Archives:

- In addition, the searches undertaken by BBC Archives included a 'junk screen' enquiry on Infax, which shows whether any related assets, such as un-broadcast raw footage/recordings, that have been held for a period have subsequently been disposed. BBC Archives confirmed that for the obituary programme, there is no information indicating that any un-broadcast recordings of the interview with Lord Mountbatten were held which were subsequently destroyed.

29. The Commissioner asked about BBC's formal records management policy on the retention and destruction of records of this type. The BBC answered:

- BBC Archives advised that it has never been the practice that all unedited or un-broadcast recordings/footage be deposited with Archives, or its predecessor departments. BBC Archives advised that, at the period when this programme was made in the late 1970s, the deposit of such un-broadcast material with BBC Archives would have been decided by the production/programme department or the individual producer, rather than by Archives. BBC Current Affairs have advised that, at the relevant time, there was no requirement to permanently retain unedited or un-used content after a programme was produced.
- Currently, the BBC's Unpublished AV Policy applies to the selection of unpublished or un-broadcast audio-visual content from BBC productions for central archiving. In particular, it provides that rushes and raw material will only be selected for retention in the central archive if they meet particular selection criteria. Un-broadcast and/or unedited content that is not eligible for central archiving is managed in accordance with the BBC Corporate Retention Schedule, which set out relevant retention periods and the action required for this type of material across various categories/genres of programmes and productions.

30. The BBC also commented on the complainant's contention that *'it is not true as the BBC claim ... they hold no interview material which was not used. The various scripts for 'A Man of Our Times' are at the BBC Written Archives.'* The BBC noted that in parts 2 and 3 of the request the complainant specifically sought any interview material with Lord Mountbatten that was not broadcast and as above, the BBC has stated that it *'does not hold such unused or un-broadcast parts of the raw recording of the interview with Lord Mountbatten for the obituary programme.'*

31. The BBC also advised that *'paperwork showing that the interviewer considered various scripts for the programme does not have any bearing on the existence of un-used or unedited audio-visual recordings of the interview.'*
32. The complainant has already been advised by the BBC that he has access to all written material that exists that may be relevant to the request at the BBC's Written Archives Centre and therefore is exempt under section 21. (see paragraph 10 above) As it was the complainant that identified the various scripts to the BBC, the Commissioner is satisfied that the complainant has access to the written materials.
33. Having considered the BBC's thorough 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.
34. 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

35. The Commissioner is disappointed that the BBC failed to respond to this FOIA request as fully as possible as soon as possible. The BBC relied on the derogation to refuse the request when it should have first considered whether or not it held information within the scope of the request.
36. In the future, the Commissioner would remind the BBC to consider each FOIA request very carefully so that all possible information that is potentially within the scope of the request is identified and considered at the time of the first response to the complainant.

Right of appeal

37. 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>

38. 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.
39. 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