

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2019

Public Authority: British Broadcasting Corporation
Address: BC2 A4 Broadcast Centre
White City
201 Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information relating to a statue of the author George Orwell that is placed outside Broadcasting House. The British Broadcasting Corporation (the BBC) confirmed holding information in relation to questions 1, 2, 3 and 5 of the request but refused to comply with the request under section 12(1) of FOIA, as to do so would exceed the appropriate cost and time limit. It also confirmed that it did not hold any information in relation to question 4.
2. The Commissioner's decision is that the BBC was entitled to rely on section 12 of the FOIA and that it was not therefore obliged to comply with the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 November 2017, the complainant wrote to the BBC and requested information in the following terms:

"My request concerns the recently unveiled statue of the author George Orwell.

Could you please confine your searches to the offices of the Director General, the Corporation's press and public relations teams, the BBC's legal department, the BBC Archives and any other department or individual which was specifically involved in the commissioning and or design and or planning and or funding and or erection of the statue.

Please note that I am only interested in information which was generated between 1 January 2015 and the present day.

Please note that I have chosen a specific time period to ensure my request stays within the time and cost constraints laid down by the FOI Act.

But if you are already aware of relevant information outside those time frames please let me know and I will submit another request.

1...During aforementioned period did the BBC exchange correspondence and communications including emails with the The George Orwell Memorial Trust. Please note that I am only interested in correspondence and communication which in any way related to the life and work of the author George Orwell, Mr Orwell's time at the BBC and plans by the BBC and others to commemorate his life and work with a sculpture or other visual art work. If the answer is yes can you please provide copies of this correspondence and communication including emails. I am interested in receiving both sides of the correspondence and communication. Please provide copies of any designs or sketches and or drawings and or photographs which accompanied the statute.

2...During the aforementioned period did the BBC exchange correspondence and communications with [redacted]. Please note that I am only interested in correspondence and communication which in any way related to the life and work of the author George Orwell, Mr Orwell's time at the BBC and plans by the BBC to commemorate his life and work with a sculpture or other visual art work. If the answer is yes can you please provide copies of this correspondence and communication including emails. I am interested in receiving both sides of the correspondence and communications including emails and supporting designs, drawings, sketches and photographs.

3...During the aforementioned period did the BBC exchange correspondence and communications with the sculptor [redacted] which in any way related to the life and work of the author George Orwell; Mr Orwell's time at the BBC and plans to commemorate the life and works of Mr Orwell with a statue or other visual representation. If the answer is yes can you please provide copies of this communications and

correspondence including emails. I am interested in receiving both sides of the correspondence and communication including emails. Can you please provide copies of any photographs and or sketches and or drawings and or designs which accompanied the correspondence/communication

4...During the aforementioned period did the BBC exchange correspondence and communications with any other sculptor and or photographer and or artist which in any way related to the life and work of the author George Orwell, Mr Orwell's time at the BBC and plans to commemorate him with a statue or other visual representation. If the answer is yes can you please provide copies of this communication and correspondence including emails. I am interested in receiving both sides of the correspondence and communication including emails. Can you please provide copies of any photographs and or sketches and or drawings and or designs which accompanied the correspondence.

5...If the BBC has destroyed relevant documents. In the case of each relevant document can you provide a brief description and outline of its contents and state on what date it was destroyed. If a copy of the destroyed document is held in another form can you please provide a copy of that document."

5. The BBC responded on 1 June 2018. It confirmed that it did not hold any information in relation to question 4. In regard to questions 1,2,3 and 5, it said that it had retrieved documents containing information within the scope of the request. However due to the volume of this information, to go through it and extract all the information within the scope of the request would exceed the appropriate limit under section 12 of the FOIA. In accordance with its obligation under section 16 of the FOIA it said that the information held covers a broad range of dates spanning the period specified in the request and therefore just reducing the time-frame the request covers would not in its opinion provide an adequate method of reducing the request within the appropriate limit.
6. Following an internal review the BBC wrote to the complainant on 19 July 2018 maintaining its position. It explained that the information it had retrieved totalled 500 pages (the initial information). It estimated that it would take a member of staff 2 minutes to read each page in order to identify and extract all information within the scope of the request and would therefore take a total of "15 hours" to complete this work. It said that additional time would then be required to collate the extracted information. It said that if the time it had already spent identifying, locating and retrieving this information was added to the time required to extract/collate information within the scope of the request from it then the total time spent processing the information

would be in excess of the statutory limit. The BBC also said that it had identified further information (the further information) within the scope of the request held in its BBC History, BBC Workplace and BBC Legal divisions that equals or exceed the volume of the initial information. However, in order to locate and retrieve this information and then go on to extract information within the scope of the request from it, further time in excess of the statutory limit would be required.

Scope of the case

7. The complainant contacted the Commissioner on 24 July 2018 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the BBC was correct to apply section 12 of the FOIA to questions 1, 2, 3 and 5 of the request.

Reasons for decision

Section 12(1) of the FOIA – cost of compliance exceeds limit

9. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations").
10. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
11. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
12. The four activities are sequential, covering the retrieval process of the information by the public authority.

The BBC's position

13. The BBC has reconsidered the complainant's request during the course of the Commissioner's investigation. In regard to the initial information, it said that this consists of 170 emails contained within the 500 pages.

- Determining whether it holds information. The BBC said that it spent 5 minutes identifying relevant business areas and individuals that could possibly hold any information. It spent a further 30 minutes contacting each relevant area/individual advising them of the request and steps to be completed in order to identify whether information was held. Given the range of business areas/divisions involved, the 2 year period spanned by the request and the changing nature of the BBC's workforce it said this task was time consuming.
- Locating and retrieving documents containing the information. The BBC said that staff across its divisions (initially identified) spent a total of 3 hours and 30 minutes searching email inboxes to locate and retrieve information relevant to the request. This included time spent searching emails, de-archiving emails, saving and sending relevant emails from inboxes to be collated. It said that it spent a further 1 hour collating the emails into a PDF bundle to save the reviewer time.
- Extracting the information from the emails. The BBC has explained that these include emails between it and the George Orwell Memorial Trust, the Sculptor and the other party named in the request. The emails cover a broad range of topics spanning the 2 year and 11 month period covered by the request including: planning permission for the statute, creation of the statute, unveiling and press coverage of the statute, and viewing and comments on the maquette and full size model of the statute. The BBC says that the emails contain chains with the most recent email at the top providing insufficient context about the subject matter on its own to determine whether it/any of its emails is within the scope of the request. In order to determine this a reviewer would have to read the full email chain from bottom up (for context) and consider which elements of the emails fall within the scope of the request by matching the contents/parties in the emails against the limbs of the request and then extract the information within the scope of the request. The BBC has provided a re-calculated cost estimate. It says that it would take 1 minute per page to carry out this work in relation each of the 500 pages. 1 minute x 500 pages = 500 minutes or 8.3 hours (8 hours and 20 minutes).

14. The BBC would therefore need to spend 13 hours and 25 minutes processing the initial information in order to provide all the information from it within the scope of the request.
15. In addition to this, the BBC has explained that the further information consists of a further 640 pages containing information that fall within scope of the request. This is because, the further electronic email searches carried out within its BBC Legal, BBC History and BBC Workplace divisions (during the internal review) returned positive responses to search terms relevant to the request that totalled 640 pages of information. In regard to this information:
 - The BBC says it spent an additional 23 minutes determining this information was held. This includes: 3 minutes identifying the 3 divisions, 5 minutes contacting 3 individuals (1 individual per division), and 15 minutes spent primarily determining whether information is held, e.g., each of the 3 individuals identified spending 5 minutes primarily entering search terms relevant to the request into email systems (3 x 5 minutes = 15 minutes).
 - Locating and retrieving this information. Because of the volume of the initial information, the further information and its application of section 12 of the FOIA in this case, the further information has not been located/retrieved. The BBC estimates that to precisely locate/retrieve this information would take 6 hours. It said this is a "*conservative estimate*" on the basis that the further information contains more pages than the initial information (140 pages more). It took 4 hours and 30 minutes to retrieve the initial 500 pages and therefore estimates it will take 6 hours to retrieve 640 pages (5 hours for the first 500 pages and 1 hour and 30 minutes more to retrieve another 140 pages) totalling 6 hours. This would include time spent searching emails, de-archiving emails and saving and sending relevant emails from inboxes. It estimates that a further 2 hours would be required to collate the emails into a PDF bundle to save the reviewer time. It again said that this is a conservative estimate on the basis that the further information contains more pages than the initial information.
 - Extracting information within the scope of the request from the 640 pages. The BBC has explained that these include emails between it and the George Orwell Memorial Trust, the Sculptor and the other party named in the request. The emails cover a broad range of topics spanning the 2 year and 11 month period covered by the request including: information about the loan agreement, preparations for the statue's launch and delivery and installation of the statute. The BBC has provided a cost estimate in relation to the further information. Although it does not know how

many emails/email chains are contained within the 640 pages, it estimated that because of the range of topics the emails cover relating to the ongoing matter of the statue that span over the 2 year and 11 month period of the request it would take 1 minute per page to review each page, e.g., 1 minute x 640 pages = 640 minutes or (10 hours and 40 minutes).

16. The BBC would therefore need to spend 18 hours and 29 minutes processing the further information in order to provide all the information from it within the scope of the request.

The Complainant's view

17. The complainant disputes the BBC's application of section 12 of the FOIA to the request. He believes that the BBC has conducted a wider search than required by the request and that it can release the information within the time and cost limits laid down by the FOIA. This is because, he is seeking correspondence between the BBC and a 'handful' of individuals /bodies about a 'narrow range' of subjects relating to George Orwell.

The Commissioner's Position

18. When dealing with a complaint to the Commissioner under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requester within the appropriate costs limit.
19. The Commissioner has considered the scope of the request, the searches carried out and the costing exercises undertaken by the BBC. The Commissioner notes that the request relates to information about commemorating George Orwell in a statute. She also notes that the initial and further information consist of emails/email chains relating to the process around the commission of a statue (to commemorate the author), including: planning permission, creation (including maquette and full size model), the loan agreement, preparations for the statue's launch, delivery, installation, unveiling and press coverage of the statute between the BBC and the organisation and parties named in the request. The Commissioner has also considered the volume of this information generated due to the ongoing nature of the process involved (in the statute's creation) requiring regular communications between the parties named in the request covering the 2 years and 11 months specified in the request, and agrees that a reviewer would need to read

and understand the context of each email/email chain before matching any information to the limbs of the request. The Commissioner therefore considers the initial and further information to be within the scope of the request, that the BBC has conducted proportionate searches and accepts its calculations for determining the information was held in respect of the initial information, and its calculations for retrieving and extracting any information within the scope of the request in respect of both the initial and further information.

20. In regard to the initial information, the Commissioner however questions the necessity for the BBC to spend 1 hour placing this information into a PDF bundle to save the reviewer time. This is because, the emails can be printed and manually collated and she therefore does not consider this a cost the BBC reasonably expects to occur. The Commissioner feels that 12 hours and 25 minutes is a more proportionate estimate for the total amount of time the BBC would have to spend processing the initial information to answer the request (35 minutes determining the information was held, 3 hours and 30 minutes locating the information and 8 hours and 20 minutes for extraction).
21. In regard to the further information, the Commissioner notes that the BBC is claiming an additional 23 minutes for determining that the information was held in its BBC Legal, BBC History and BBC Workplace divisions. She however notes that the BBC did not make enquiries with these divisions at the time of providing its initial response and therefore does not consider it acceptable to allow this additional time within its calculations. The Commissioner again also questions the necessity to spend 2 hours placing this information into a PDF bundle on the same basis as given in paragraph 20 and does not consider this a cost the BBC reasonably expects to occur. The Commissioner feels that 16 hours and 40 minutes is a more proportionate estimate for the total amount of time the BBC would have to spend processing the further information to answer the request (6 hours for retrieval and 10 hours and 40 minutes for extraction).
22. The Commissioner has determined that the BBC would have to spend a total of 29 hours and 5 minutes processing all the information it holds in order provide the requested information. 12 hours and 25 minutes spent on the initial information, and 16 hours and 40 minutes spent on the further information. She therefore accepts that the cost of compliance would exceed the appropriate limit prescribed by the FOIA in this case.
23. On the basis of the calculations in this decision notice, the Commissioner is satisfied that the BBC is entitled to rely on section 12(1) of the FOIA and refuse the complainant's request.

Right of appeal

24. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

**Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**