

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2023

Public Authority: British Broadcasting Corporation (BBC)

Address: 2252 White City
201 Wood Lane
London
W12 7T

Decision (including any steps ordered)

1. The complainant has requested information about complaints made against John Peel (aka John Robert Parker Ravenscroft) between 1 January 1967 and 25 October 2004.
2. The BBC confirmed under section 1(1)(a) FOIA that on the balance of probabilities it did not hold the requested information. However in the internal review the BBC did explain the limitations of the searches it had conducted but confirmed to conduct further searches would exceed the cost limit under section 12 FOIA.
3. The Commissioner's decision is that section 12 FOIA would be applicable in this case as it would exceed the cost limit for the BBC to determine whether or not information is held falling within the scope of the request. However the BBC breached sections 16 and 17(5) FOIA in the handling of this request.
4. The Commissioner requires the BBC to take the following step to ensure compliance with the legislation.
 - The BBC must comply with its obligations under section 16 FOIA in relation to this request.
5. The BBC must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 28 July 2022 the complainant requested the following information:

"1. Between 1 January 1967 and 25 October 2004 did the BBC ever receive complaints about John Peel's behaviour on and or off BBC premises. I am only interested in those complaints which included allegations of sexual misconduct and or illegal sexual activity and or allegations of sexual abuse and or sexual discrimination and or sexual harassment. These complaints will include but will not be limited to allegations that Mr Peel propositioned and or had sexual relations with partners under the age of 16. I am interested in complaints whether made by other BBC staff or individuals not working for the BBC.

2. If the answer to question one is yes can the BBC state how many complaints it received.

3. In the case of each complaint can the BBC describe the allegations against Mr Peel. In the case of each complaint can the BBC provide the number of, and the ages of the victim(s) featured in the complaint. In the case of each complaint can you state whether Mr Peel carried out the alleged act(s) on BBC premises. In the case of each complaint can you identify the BBC premises. In the case of each complaint can you state when the complaint was received? In the case of each complaint can you state when the alleged behaviour is supposed to have taken place?

4. In the case of each complaint can the BBC state how it responded to the complaint? In the case of each complaint can you state whether the BBC referred the matter to the police. In the case of each complaint can you state why the BBC didn't refer the matter to the police.

5. In the case of each complaint did the BBC ever write to and speak to Mr Peel and or his representatives about the allegations. If the answer is yes, can you, please provide copies of the BBC's correspondence and communications with Mr Peel and or his representatives about these matters. Can you also provide copies of Mr Peel's correspondence and communications with the BBC about these matters.

6. Since 2004 has the BBC destroyed any documentation which relates to complaints against Mr Peel. In the case of each document destroyed can the BBC state when the document was destroyed and why. In the case of each destroyed document can the BBC provide a summary of its contents including details of the complaints. If any destroyed documentation continues to be held in another form, can you, please provide copies of that documentation."

7. On 14 December 2022 the BBC responded, it confirmed that it did not hold any information falling within the scope of the request under section 1(1)(a) FOIA.
8. On 15 December 2022 the complainant requested an internal review.
9. On 24 February 2023 the BBC provided the internal review. It confirmed under section 1(1)(a) FOIA that on the balance of probabilities no information was held falling within the scope of the request. However it did explain the limitations of searches conducted (despite wider search terms being used at the time of the internal review) but confirmed that to conduct further searches would exceed the cost limit under section 12 FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 18 February 2023 to complain about the way that their request for information had been handled.
11. The Commissioner accepted the complaint for substantive investigation following the internal review decision. As the BBC explained the limitations of the searches conducted in this case to determine whether or not information was held falling within the scope of the request, the Commissioner has considered whether it would exceed the cost limit under section 12 FOIA to determine whether or not the BBC holds the requested information.

Reasons for decision

Section 12

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). Under regulation 12(2) a public authority is not obliged to comply with section 1(1)(a) FOIA (to confirm or deny whether information is held falling within the scope of the request) if to do so would exceed the cost limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for

central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the BBC is £450.

14. 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 for the BBC.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
18. The BBC has explained the searches it has conducted in relation to this request. These included BBC Archives, the Safety, Security and Resilience Team, Employment Legal, BBC Litigation and HR running electronic searches using relevant search terms including 'complaint'. However initially BBC Archives, BBC litigation, Employment Legal and HR had only searched for the name 'Peel' as part of the search criteria and therefore at internal review these departments re-ran the searches also using the terms 'Ravenscroft' and 'John Robert Parker Ravenscroft'. The BBC confirmed that it was still unable to locate any information falling within the scope of the request.

19. In relation to the searches done at the initial stage, using the relevant search terms and 'Peel', this brought back over 8000 results. Following a sampling exercise of the results, BBC confirmed that these included matters that were not specifically complaints about John Peel but for example mentioned his surname elsewhere within the same document that used the word 'compliant'. It also included records of complaints unrelated to the nature of this request, for example editorial complaints. BBC said that a reasonably sized sample of those results were reviewed and did not contain information falling within the scope of the request. It said to review all 8000 results would exceed the cost limit under section 12 FOIA.
20. It said that BBC Archives had also searched hard copy files, looking for words contained in the title of a file and index (however this search did not include checking the contents of those files). No relevant information was located based upon checking the file titles/index searches.
21. BBC also said that its contributor files were checked which are physical personnel files which contain administrative records such as contracts and no relevant information was located.
22. In this case 8000 electronic records were located when using the initial search terms and the name 'Peel'. At internal review additional search terms were used – 'Ravenscroft' and 'John Robert Parker Ravenscroft'. This would be likely to locate further records. Whilst BBC reviewed a sample of the 8000 records located, to enable it to determine definitively that no relevant information was contained within those records they would all need to be checked. Even taking a very conservative time of allowing 30 seconds per record, this would exceed 66 hours work.
23. On this basis, the Commissioner considers that in this case it would exceed the cost limit under section 12 FOIA to enable the BBC to determine whether it holds information falling within the scope of this request.

Section 16

24. Section 16 states that:

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

25. In this case, as section 12 FOIA is applicable to this request, the BBC has an obligation under section 16 FOIA to provide advice to assist the complainant in refining the request for information or explaining why this would not be possible.
26. In this case the BBC has not complied with its obligations under section 16 FOIA.

Section 17

27. Section 1 states that:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

28. Section 10 FOIA states that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

29. Section 17 states that:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

30. In this case the BBC did not state its reliance upon section 12 FOIA until the internal review, which was nearly 7 months after the request was made. It therefore breached section 17(5) FOIA in the handling of this request.

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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
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Wycliffe House
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