

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2023

Public Authority: Channel 4
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant has requested information relating to the value of commissions made by a named individual at Rumpus Media. Channel 4 did not respond to the request, relying on section 17(6) of FOIA.
2. The Commissioner's decision is that section 17(6) of FOIA does not apply in this case.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - The public authority must either provide the requested information or issue a refusal notice in accordance with its obligations under FOIA.
4. The public authority 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

5. On 26 January 2023, the complainant made the following request for information to Channel 4 via the whatdotheyknow website:

“Please could you tell me the value of all commissions made by [named individual] from Rumpus Media during his time as [job title] at Channel 4.

As you know, [named individual] should have declared a conflict of interests in commissioning from Rumpus under your Code of Conduct as [redacted]. [Named individual] failed to do so it is right and proper to know exactly [sic] how much he did commission under an undeclared conflict of interests.

Could you please also inform me what action, if any, the Corporation has undertaken to investigate this conflict of interests [sic] now it has been brought to your attention via the FOI process.

By way of background, [named individual] was the Commissioning Editor on [named television program].”

6. Channel 4 did not respond to the request.

Scope of the case

7. It is useful to first provide some background information to assist with the understanding of this case. The complainant in this case has made a number of requests to Channel 4 on the same or similar subjects. There are three requests relevant to this case, all of which have been the subject of complaints to the ICO. They are:

- **Request A** – made on 11 July 2022 and refused by Channel 4 under section 14 on the basis that it was vexatious. In July 2023, the Commissioner issued a decision that section 14 did not apply in this case and ordered Channel 4 to reconsider the request;
- **Request B** – made on 29 November 2022. At internal review, Channel 4 stated that it considered the request to be vexatious under section 14. It went on to state that it would consider “any further requests made under the Act by [the complainant] relating to Rumpus Media Ltd, [named television show], [named individual] or any individuals that have worked on or in close connection with that programme” to be vexatious, and would not be responding to them. The complainant complained to the

Commissioner about this case on 11 February 2023. However, during the course of the Commissioner's investigation of this complaint, the complainant informed the Commissioner that they no longer wished to challenge Channel 4's application of section 14(1) to their request; and

- **Request C** – made on 26 January 2023 and the subject of this decision notice. Channel 4 did not provide a response to this request.
8. The complainant contacted the Commissioner on 13 July 2023 to complain about Channel 4's failure to respond to Request C (i.e., his 26 January 2023 request for information).
 9. As the Commissioner expects complaints to be made to him within six weeks of a public authority either refusing or failing to respond to a request for information, he wrote to the complainant on 19 July 2023 to explain that he considered there to be an undue delay in bringing the complaint to him. The Commissioner would therefore not be accepting the complaint.
 10. The complainant responded to the Commissioner on 19 July 2023, explaining that he believed that Channel 4 was relying on the refusal notice from Request A to refuse to respond. As stated above, the Commissioner issued a decision notice in July 2023 ruling that section 14 did not apply to Request A. The complainant explained that he therefore believed the refusal notice in Request A to no longer be valid, and that it therefore could not be relied on to refuse to respond to Request C.
 11. In view of this reason, the Commissioner agreed to accept the complaint as a possible breach of section 10 of FOIA (time for compliance).
 12. The Commissioner contacted Channel 4 on 21 July 2023 in relation to its apparent failure to respond to Request C.
 13. Channel 4 responded to the Commissioner on 18 August 2023, explaining that it was not relying on the refusal notice from Request A, but was instead relying on the internal review response in Request B to refuse to respond to Request C.
 14. The Commissioner therefore considers that the scope of his investigation in this case is to decide whether, at the time of the response, Channel 4 was able to rely on section 17(6) of FOIA to refuse to provide a response to Request C.

Reasons for decision

15. Section 1(1) of FOIA states that:

"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."

16. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".

17. Section 17(5) of FOIA requires a public authority that wishes to refuse a request as vexatious to issue a refusal notice, stating that fact, within 20 working days of the request having been received.

18. However, section 17(6) of FOIA contains an exception to this rule. It states:

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

19. In its response to the Commissioner, Channel 4 has explained that it considers the request to be vexatious for the following reasons:

- The request is aimed at specific individuals,
- The request is made in connection with broader issues that have been otherwise thoroughly considered by the organisation (Channel 4's Speak Up facility),
- Channel 4's FOIA team have been responding to requests about Rumpus/Speak Up/[named individual] since September 2021,

including informing the enquirer of its view that the requests are vexatious,

- Channel 4 also considers that social media posts that the complainant sent to Channel 4 the day after the request relating to the [named television show] are evidence of threats to Channel 4 staff, and
- Channel 4 therefore considers it is no longer reasonable to continue to issue responses to these requests.

20. In view of the above, the Commissioner is satisfied that Channel 4 is relying on a claim that the request in this case is vexatious. He is also satisfied that Channel 4 had already told the complainant that it was relying on such a claim in relation to a previous request for information (Request B).

21. However, whilst the Commissioner recognises the reasons for which Channel 4 relied on section 17(6) in relation to Request C (given that Request C was made within two hours of Channel 4 providing the internal review response to Request B, in which it stated that it would not be responding to further requests), he cannot ignore the fact that Request A has been determined to not be vexatious. If Channel 4 was able to rely on 17(6) in this case, it could lead to a perverse situation whereby Channel 4 could ignore future requests from the complainant despite there never having been a section 14 decision upheld by the Commissioner in relation to their requests.

22. The Commissioner therefore considers that it would be reasonable in all the circumstances to expect Channel 4 to serve a further refusal notice in this case.

23. The Commissioner is therefore of the view that Channel 4 cannot rely on section 17(6) in relation to the request of 26 January 2023 (Request C), and must therefore now issue a response, either:

- a) Providing the requested information, or
- b) Explaining why it will not be doing so, including an explanation of the exemption or exemptions it is relying on to refuse the request (i.e., issue a valid refusal notice under section 17 of FOIA).

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Pamela Clements
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