

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2024

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

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

Decision (including any steps ordered)

1. The complainant has requested information from the BBC regarding TV licences, assessment information, misconduct allegations, employment statistics and whistleblowing information.
2. The Commissioner's decision is that the BBC was entitled to rely on section 12 when refusing these requests. The Commissioner also finds that the BBC met its obligation under section 16 to offer advice and assistance.
3. The Commissioner does not require further steps.

Request and response

4. On 1 July 2023, the complainant wrote to the BBC and requested information in the following terms:

"1. Where a TV licence is needed and where known, what number of people self-declare as not needing a TV licence who are also found to have intentionally misrepresented their status? Please provide data for the time period 1990-2022, including both aggregate figures and a breakdown for each of the individual calendar or financial years, as well as expressing these numbers as percentages of all people who self-declare as not needing a TV licence.

2. Following from (1), where known: (A) what number of these individuals object to holding or paying for a TV licence due to moral and/or philosophical grounds? (B) What number of these individuals were found to have used streaming platforms? (C) Express the numbers in (A) and (B) as percentages of people who self-declared as not needing a TV licence. Please provide data for the time period 1990 - 2022, including both aggregate figures and a breakdown for each of the individual calendar or financial years.

3. Please share a comparison of the demographic characteristics, where known, of TV licence-holders compared to (a) the general population and (b) those who do not have TV licences. Please share results of any relevant statistical significance tests used for evaluating the differences and, for the comparisons with general population, please use census data and/or other applicable benchmarks.

4. Can you share assessments of the commercial value(s) of (a) the BBC trademark, (b) the BBC logo(s) and (c) the BBC brand? Where possible, please include (a high level description of) the underlying methods for such calculations.

5. How many formal allegations of bullying, harassment, discrimination and victimisation has the BBC recorded? Please can you provide these numbers and percentages split between (a) BBC employees, (b) individual BBC contributors, (c) affiliated entities (including firms contracted through the BBC) and (d) other individuals or entities with whom the BBC has interacted. Please provide data for the time period 1990 - 2022, including both aggregate figures and a breakdown for each of the individual calendar or financial years.

6. Insofar as this this is recorded and privacy-preserving, what are the numbers of BBC employees who formally commence employment with other media outlets within 1 year of leaving (terminating their employment with) the BBC, including where possible a list of numbers and percentages leaving to each respective named media outlet?

7. For the time period 1990 - 2022, please share the characteristics of those employed through temporary contracts for the BBC compared with permanent contracts for the BBC, including but not limited to (where known/recorded): gender identity or sex, ethnicity or race, income received through those contracts, age group, disability, health conditions, family and relationship status, socioeconomic background, religion or belief, residence, contracted location of work and any other characteristics the BBC has recorded for such employees. In addition to the aforementioned time period, include both aggregate figures and a breakdown for each of the individual calendar or financial years.

8. What percentage of BBC employees have signed formal, written employment contracts for the time period 1990 - 2022? Where known, please provide the split of these percentages between those employed on temporary contracts vs permanent contracts and provide this at an aggregate level for the aforementioned time period as well as for each of the individual, constituent (calendar or financial) years.
9. For the time period 1990-2022, encompassing BBC employees that make formal allegation(s) of bullying, harassment, discrimination or victimisation and within the 3 years following the allegation(s), what number and percentage (a) leave / discontinue their employment with the BBC, (b) were subject to disciplinary measures (e.g. due to performance or misconduct) before or after making such allegations, (c) secure promotions to higher pay bands / grades within the BBC. How does this compare against employees who do not make those formal allegations? In addition to the aforementioned time period, include both aggregate figures and a breakdown for each of the individual calendar or financial years.
10. For the time period 1990 - 2022 and covering BBC employees that commenced formal whistleblowing procedures and within the 3 years following the allegation(s), what number and percentage (a) leave / discontinue their employment with the BBC, (b) were subject to disciplinary measures (e.g. due to performance or misconduct) before or after commencing such procedures, (c) secure promotions to higher pay bands / grades within the BBC. How does this compare against employees who do not commence with formal whistleblowing procedures? In addition to the aforementioned time period, include both aggregate figures and a breakdown for each of the individual calendar or financial years.
11. Following from questions (5), (9) and (10), please provide numbers and percentages for characteristics of those who commenced formal whistleblowing procedures or allegations of bullying, harassment, discrimination or victimisation, including but not limited to (where known/recorded): gender identity or sex, ethnicity or race, income bracket / pay band, age group, disability, health conditions, family and relationship status, socioeconomic background, religion or belief, residence, contracted location of work and any other characteristics the BBC has recorded for such employees. Please provide data for the time period 1990 - 2022 and include both aggregate figures as well as a breakdown for each of the constituent (calendar or financial) years.”
5. The BBC responded on 20 July 2023. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the applicable cost threshold of £450. The BBC explained that, due to the nature of the request, it was not possible to

offer meaningful advice and assistance which would enable the information to be provided without exceeding the cost limit. The BBC did provide some general information to support the complainant.

6. Following an internal review, the BBC wrote to the complainant on 18 September 2023. It stated that it was maintaining its application of the cost exemption, but rather than relying on section 12(1), it advised it would now be relying on section 12(2). The BBC explained that to confirm or deny whether the requested information is held would exceed the cost limit.

Scope of the case

7. The complainant contacted the Commissioner on 18 September 2023 to complain about the way their request for information had been handled. The complainant disagrees with the BBC's application of section 12 of FOIA.
10. During the Commissioner's investigation, the BBC advised the complainant that some of the information within the scope of question 4 was not held and provided the complainant with an additional link to further information. The complainant has not provided the Commissioner with any further concerns over this question and he will therefore not be considering this part of the request in his investigation.
11. Having reviewed the BBC's and the complainant's position, the Commissioner considers that the scope of his investigation is to determine if the BBC has correctly cited section 12 of FOIA in response to the remaining parts of the request. The Commissioner has also considered whether the BBC met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

Aggregation of requests

12. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations, provided

those requests are received by the public authority within any period of sixty consecutive working days. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

13. In the Commissioner's guidance¹ on exceeding the cost limits, he explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".

14. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
15. Although the BBC did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there are a number of overarching themes. He considers that parts 1-3 all concern TV licensing matters and 5-11 all concern bullying and employee matters. Therefore, the BBC is entitled to aggregate the costs of dealing with parts 1-3 and 5-11 of the request.
16. Although the Commissioner acknowledges that the BBC has advised that for some questions confirming or denying holding some of the requested information would exceed the cost limit, he has decided to focus his investigation firstly on the parts of the requests where information is held but the BBC has explained that providing the information would exceed the cost limit. Regardless of whether the BBC exceeds the cost/time limit when confirming or denying if information is held or when

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

trying to retrieve the requested information, once the cost limit has been exceeded a request can be refused under section 12.

17. 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")
18. The "appropriate limit" is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. Therefore, the "appropriate limit" for the BBC is £450.
19. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 18 hours for the BBC to deal with this request.
20. 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.
21. 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. 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.
22. 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.
23. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Parts 5 - 11 of the request

24. The BBC stated for question 5 only, the information would be partially held, but it would take approximately 105 hours to comply with the request. The BBC explained that in order to comply with the request, it would be required to manually search and review around 50,000 employee files on different data bases. Information from 1990-2006 would likely be contained within a different database compared to information dated 2006 onwards.
25. For the files on the electronic system, one small employee file could take from one/two minutes per file (at a conservative estimate). Whereas members of staff who have worked for the BBC for longer would potentially have larger employee files and these could take longer to review (potentially five minutes per file).
26. The BBC explained that for manual files, it would need to request information from its Archive, which would take time to retrieve and then send to it, before it would need to consider each file and note down the information required for this request.
27. The Commissioner notes that although the total amount time estimated by the BBC does not match the breakdown of each manual file search and review, he is satisfied that even if the BBC spent the lowest estimate of time (one minute per file), the cost limit would still be exceeded for 50,000 employee files. Answering this part of the request alone would far exceed the cost limit under FOIA.
28. The Commissioner has concluded that the BBC has estimated reasonably that to comply with the requests under parts 5-11 would exceed the appropriate cost limit. The BBC was therefore correct to apply section 12(1) of FOIA to the complainant's request in its initial response.

Parts 1 – 3 of the request

29. The BBC stated that for question 1, it will hold information on the number of "no licence needed" (NLN) addresses that have been visited and are found to need a licence. However, this information is also routinely deleted in accordance with established retention procedures.
30. Capita retain case files on behalf of the BBC for up to 6 years, meaning it is unlikely that information would be held for the entire 30-year period. To locate this information, Capita would need to retrieve the Record of Interview (ROI). For newer cases this information would be held on Capita's electronic system, but for older cases, the ROI would be archived and need to be retrieved from offsite storage.

31. Once retrieved the ROI would need to be reviewed and compared with each individual case file to try to find any indication that the NLN declared had been provided by an individual who misrepresented their status.
32. The BBC advised that establishing an intention to deceive would be difficult and, in some cases, potentially not possible. The BBC stated that in certain circumstances the individual who had declared their situation may have misunderstood the terms of the declaration.
33. A total of 2231 ROIs were taken during the last 6 years (the files retention period), the BBC estimated that it would take approximately 10 minutes to retrieve a file, review the information and cross-compare with the case file just to determine if the requested information was held. This would amount to approximately 371 hours (53 days) worth of work.
34. The BBC concluded that even if it were to reduce the amount of time to retrieve and review the file to 1 minute per file, this would still amount to 37 hours' worth of work.
35. Having reviewed the BBC position, the Commissioner has concluded that the BBC has estimated reasonably that to determine if it holds the information and locating/retrieving the requested information, would exceed the appropriate cost limit. The BBC was therefore correct to apply section 12(2) of FOIA to parts 1-3 of the complainant's request. The Commissioner also notes the BBC's comment from the internal review: "For the avoidance of doubt, if we were able to confirm whether all of the information was held within the limit, gathering it would also clearly exceed the section 12 limit." The Commissioner is in agreement with this position.

Section 16(1) – duty to provide advice and assistance

36. Section 16(1) of FOIA provides that a public authority should give reasonable advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that,

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

where public authorities have relied on section 12 to refuse a request, they should:

“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 help a person reframe or refocus their request with a view to bringing it within the cost limit”.

37. The BBC advised the complainant that they were unable to provide meaningful advice and assistances due to the request covering a period of more than 30 years and several subject matters.
38. The Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice. He is satisfied that on this occasion the BBC met its obligation under section 16 of FOIA by explaining to the complainant it was unable to provide any realistic way of reducing his request so any part of it would fall within the cost limit parameters.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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