

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2021

Public Authority: British Broadcasting Corporation ("the BBC")

Address: Broadcast Centre

White City

Wood Lane

London

W12 7TP

Decision (including any steps ordered)

1. The complainant requested information relating to the BBC's spend on the World Service. The BBC responded that the requested information was covered by the derogation and hence excluded from the FOIA.
2. The Commissioner's decision is that this information was held by the BBC for the purposes of journalism, art or literature and so was not covered by the FOIA. She therefore upholds the BBC's position and requires no remedial steps to be taken in this case.

Request and response

3. On 29 November 2020, the complainant wrote to the BBC and requested information in the following terms:

"In your annual report you state on page 50 that 'Including content, distribution and general support costs, £261 million (2019: £278 million) was spent on the BBC World Service operating licence'.

I want a breakdown of that £261 million spend and an explanation of what spending was reduced or stopped from 2019 leading to the fall of £17 million."

4. On 22 December 2020 the BBC responded to the request. The BBC explained that it did not believe that the information was caught by the FOIA because it was held for the purposes of "art, journalism or literature".

5. It therefore would not provide any information in response to the request.

Scope of the case

6. The complainant contacted the Commissioner on 24 December 2020 to complain about the way his request for information had been handled. In particular, he challenged the operation of the derogation in this case.
7. The scope of this case and the following analysis is to determine whether the information requested is excluded from the FOIA because it was held for the purposes of "journalism, art or literature".

Reasons for decision

8. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held.
9. The FOIA only applies to the BBC to a limited extent. Schedule One, Part VI of the FOIA provides that the BBC is a public authority for the purposes of the FOIA but it only has to deal with requests for information in some circumstances. The entry relating to the BBC states:

"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature."
10. This is known as the "derogation". This means that information that the BBC holds for the purposes of journalism, art or literature - in broad terms, its output or related to its output - is not covered by the FOIA. If information falls within the derogation, then that is the end of the matter; there is no public interest test or similar provision to consider the merits of disclosure.
11. Broadly, BBC information that is covered by the FOIA includes information about how the BBC is managed and run, including the TV licence; the BBC's employees and its human resources practices; and the BBC's performance.
12. BBC information that is not covered by the FOIA includes the following: information about the BBC's on-screen or on-air "talent" including its presenters and journalists; information about BBC programmes including any spend or editorial decisions associated with its programming; materials that support the BBC's output, such as the

script of a television programme or a source drawn on for an investigation; and viewer and listener complaints to the BBC about the above.

13. The derogation as it applies to the BBC is discussed in more detail in numerous published decisions made by the Commissioner, such that she does not consider it necessary to reproduce that detail again here. However, key to the derogation is the Supreme Court decision in *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC¹.
14. The Supreme Court explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.
15. The Commissioner adopts a similar definition for the other elements of the derogation, in that the information must be used in the production, editorial management and maintenance of standards of those art forms.
16. In this case the BBC's reasoning was that information relating to the cost of the World Service is an editorial matter as decisions on a given piece of journalistic output will involve editorial judgement about the content and the costs involved. The BBC further explained that any decision taken on spend has a direct impact on the creative scope for programmes because more money spent on one area or one programme means less available for another.
17. The Commissioner recognises that these decisions relate to editorial decisions which fall within the Supreme Court's definition of journalism as the Court set out in the aforementioned case as it involves the exercise of judgement on issues such as the selection, prioritisation and timing of matters for broadcast or publication.
18. The Commissioner's view is that the information requested would be held by the BBC for the purposes of journalism and so would not be covered by the FOIA. Her decision is, therefore, that the BBC was not obliged to comply with Parts I to V of the FOIA in relation to the complainant's information request.

¹ <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

Right of appeal

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

20. 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.

21. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**