

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 10 March 2011

**Public Authority:** British Broadcasting Corporation  
**Address:** 2252 White City  
201 Wood Lane  
London  
W12 7TS

### Summary

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The complainant requested the details of how much money had been spent and was expected to be spent by the BBC on its coverage of the Papal visit to Britain by Pope Benedict XVI. The BBC stated that the requested information fell outside the scope of the Act because it is information held for the purposes of journalism, art or literature. The Commissioner's decision is that the requested information is genuinely held for the purposes of journalism. Therefore the BBC is not obliged to comply with Parts I to V of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether the BBC has complied with its duties under the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 16 September 2010 the complainant requested the following information to be provided in accordance with the Act:

*"Please could you tell me how much money the BBC has spent (and expects to spend) on its coverage of the pope's current visit."*

3. On 1 October 2010 the BBC issued its response. It explained that it believed that the information requested was excluded from the Act because it was held for the purposes of 'journalism, art or literature.' It explained that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for 'purposes other than those of journalism, art or literature'. It concluded that the BBC was not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities. It therefore would not provide any information in response to the request for information.

## The Investigation

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### Scope of the case

4. On 4 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That the BBC seemed to have taken the view that any information that relates in any way to any broadcast is exempt.
  - That, in the interests of transparency and good management, he would like to see management information.

### Chronology

5. On 23 November 2010 the Commissioner wrote to the BBC questioning the fact that although financial information might have an impact on programming, it was not clear-cut how in this case the BBC used the information in order to create its journalistic, artistic or literary output bearing in mind the one-off nature of the visit. He noted the BBC's approach on the factors it takes into account in considering derogation.
6. The Commissioner went on to ask specific questions in the context of a Papal visit that was unlikely to be repeated for several decades.
7. Firstly the Commissioner asked:

Does the BBC see the Pope's visit as a unique event or could the requested information be used in similar logistical scenarios in the future?

The BBC responded on 18 February 2011 in the following way:

- The BBC does not see the Papal visit as a unique event. It detailed elsewhere in this letter how the requested information had been used in the past and how it would be used in similar logistical scenarios in the future. The BBC argued that, whilst the Papal visit might seem to be a unique event, the costs incurred are not. The same sort of editorial decisions about resourcing would inform other state visits such as a visit by the President of the United States. The BBC pointed out that it was quite possible that the locations might be the same and that there would be similar logistical scenarios, resource allocation, creative output and editorial decisions taken and costs incurred. An example was used of Westminster Abbey which was the location of the third largest event of the Papal visit and would also be the venue for the Royal wedding due to take place in April 2011. The coordination of events of this nature is based on a 'blueprint' of coverage for any big story or event. Coverage of the Papal visit at Bellahouston Park included platforms for the cameras, the costs of which were shared with Sky and ITV. One of the broadcasters in the pool pays the supplier and the cost is then split between the others taking part. The BBC went on to explain that information relating to costs will be used to inform future events.

Secondly the Commissioner asked:

How does the BBC anticipate that the requested information will be used for the purposes of creating the BBC's output or information that supports/is closely associated with that output?

- The BBC explained that the requested information relates to editorial decision-making as the resource allocated to particular coverage reflects its intended ambition. It pointed to the Commissioner's agreement in a previous case that the resource allocated to a given story is editorial. Whilst it is possible to plan some of the proposed spend, as events emerge editorial decisions taken can alter the costs incurred. An example provided was the story that emerged about a potential threat to the Pope's safety. The cost to the BBC of the coverage of the Pope's visit included staff costs, satellite trucks, freelance correspondents' fees, equipment hire and associated fees. Internal expenditure was agreed and monitored based on a series of editorial decisions and was shared across internal departments overseen by a dedicated accountant in each department involved. The BBC confirmed that no extra money was made available to BBC Newsgathering as it is fixed each year and the budget can only be spent once. The allocation of funds is dictated by the editorial strategy and the BBC explained that a decision to have live coverage of the

papal visit rather than by delayed feed has a direct impact on the costs incurred. Any decision taken over costs on one programme has a direct impact on the creative scope of other programmes because more spent on one programme means less available for another.

Finally the Commissioner asked:

Please explain if the BBC is likely to use the requested information to help to determine what future coverage to grant to the visit of a faith leader?

- The BBC confirmed that it was likely to use the requested information to inform decisions about the future coverage of visits by other faith leaders. The requested information would also be used to inform future logistical scenarios, editorial decisions and the costs incurred for events such as the Royal Wedding and future state visits.

## Analysis

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### Substantive Procedural Matters

#### Jurisdiction

8. Section 3 of the Act states that:

*"3. – (1) In this Act "public authority" means –  
(b)... any body...which –  
(i) is listed in Schedule 1....."*

9. The entry in relation to the BBC at Schedule 1, Part VI reads:

*"The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature"*

10. Section 7 of the Act states:

*"7. – (1) Where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority".*

11. This means that the BBC is a public authority for the purposes of the Act but only has to deal with requests for information which is not held for the purposes of journalism, art or literature. The term 'derogated' is

used to describe information that falls outside the Act, i.e. information that **is** held by the BBC for the purposes of journalism, art or literature.

12. The House of Lords in the case of *Sugar v BBC* [2009] UKHL 9 confirmed that the Commissioner has jurisdiction to issue a decision notice in respect of any request made to the BBC regardless of whether or not the information is derogated. Where the information is derogated, the Commissioner considers that the BBC has no obligations to comply with Parts I to V in respect of that information.
13. The Commissioner will first determine whether the request is for information held for the purposes of journalism, art or literature and if therefore the BBC is required to comply with Parts I to V in respect of the request.

## Derogation

14. The scope of the derogation has been considered by the Court of Appeal in the case *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715. The leading judgment was made by Lord Neuberger of Abbotsbury MR who stated that:

*" ..... once it is established that the information sought is held by the BBC for the purposes of journalism, it is effectively exempt from production under FOIA, even if the information is also held by the BBC for other purposes." (paragraph 44), and that  
"....provided there is a genuine journalistic purpose for which the information is held, it should not be subject to FOIA." (paragraph 46)*

15. The Commissioner considers that it follows from this that if the information is genuinely held for any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to the Act.
16. With regard to establishing the purpose for which the information was held, Lord Neuberger of Abbotsbury MR (at paragraph 55) drew a distinction between information which had an effect on the purposes of journalism, art or literature and information that was actually being held for one of those purposes. Based on this judgment the Commissioner considers that for information to be held for a derogated purpose it is not sufficient for the information to simply have an impact on the BBC's journalistic, artistic or literary output. The BBC must be using the information in order to create that output, in performing one of the activities covered by journalism, art or literature.

17. The Court of Appeal adopted the Tribunal's definition of journalism in *Sugar v IC and the BBC* [EA/2005/0032] at paragraphs 107 to 109 which set out that journalism comprises three elements.

*"107. The first is the collecting or gathering, writing and verifying of materials for publication.*

*108. The second is editorial. This involves the exercise of judgement on issues such as:*

- \* the selection, prioritisation and timing of matters for broadcast or publication,*
- \* the analysis of, and review of individual programmes,*
- \* the provision of context and background to such programmes.*

*109. The third element is the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and development of individual journalists, the mentoring of less experienced journalists by more experienced colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making."*

18. In considering whether the information is held for the purposes of journalism the Commissioner has considered the following factors:

- The purpose for which the information was created;
- The relationship between the information and the programmes content which covers all types of output that the BBC produces; and
- The users of the information.

19. The information that has been requested in this case is how much money the BBC had spent and planned to spend on the Papal visit in September 2010. The purpose of this information was to allocate resources to a major news event.

20. The Commissioner understands that the creative output of the BBC in relation to events such as the visit by Pope Benedict XVI and other State visits or similar events is directly influenced by the allocation of funds which are, in turn, determined by editorial decisions. The Commissioner accepts the BBC's explanation that such events are not unique and that they are subject to change based on a rolling programme of news. He accepts that the general journalistic output of the BBC is affected by budgetary considerations which are not set in

stone but can alter with unforeseen events. The Commissioner also accepts that the expenditure involved in the coverage of events such as this feed into future similar visits or events. He accepts that information on production costs of covering events such as the Papal visit are being retained so that producers of programmes involving future events such as a visiting head of state can make informed future editorial decisions. The Commissioner acknowledges that the information retained in this case is therefore likely to be used to inform future logistical scenarios, editorial decisions taken and costs incurred for other large events.

21. For all of the reasons above, the Commissioner is therefore satisfied that the information requested is derogated. Therefore, the Commissioner has found that the request is for information held for the purposes of journalism and that the BBC was not obliged to comply with Parts I to V of the Act.

## **The Decision**

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22. The Commissioner's decision is that as the request is for information that is held for the purposes of journalism, art or literature the BBC was not obliged to comply with Part I to V of the Act in this case.

## **Steps Required**

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23. The Commissioner requires no steps to be taken.

## Right of Appeal

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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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 10<sup>th</sup> day of March 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex - Relevant Statutory Provisions

**Section 1(1)** states that –

“Any person making a request for information to the 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 the information communicated to him.

**Section 3(1)** states that –

“in this Act “public authority” means –

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
  - (i) is listed in Schedule 1, or
  - (ii) is designated by order under section 5, or
- (b) a publicly-owned company as defined by section 6”

**Section 3(2)** states that –

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.”

**Section 7(1)** states that –

“Where a public authority is listed in schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority.”

**Schedule 1, Part VI** reads:

*“The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature”*