

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2011

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 the disclosure of the costs incurred by the BBC to broadcast the Royal Wedding. The BBC explained the information was covered by the derogation and therefore excluded from the FOIA.
2. The Commissioner's decision is that this information was held by the BBC genuinely for the purposes of 'journalism, art or literature' and did not fall inside the FOIA. He therefore upholds the BBC's position and requires no steps to be taken.

Request and response

3. On 28 April 2011, the complainant requested the following information from the BBC:

"Under the Freedom of Information Act please tell me how much the BBC coverage of the 29th April wedding has cost, to include Radio, Web, TV, trailers, programmes (regional and national), expenses, fees and any other expense incurred in the coverage on 29th April and preceding and following 29th April."
4. The BBC responded on 25 May 2011. It stated that the information requested is excluded from the FOIA because it is 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 FOIA 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.

Scope of the case

5. On 26 May 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The complainant challenged the application of the derogation in this case. He explained that he did not agree that the coverage of the Royal Wedding fell within the definition of journalism, and therefore contested that the operational budget for BBC journalistic output was engaged.

Reasons for decision

7. Schedule I, part VI of the FOIA provides that the BBC is a public authority for the purposes of the FOIA but 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."

8. This means that the BBC has no obligation to comply with part I to V of the FOIA where information is held for 'purposes of journalism, art or literature'. The Commissioner refers to this as 'the derogation'.
9. The House of Lords in *Sugar v BBC* [2009] UKHL 9 confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the information is caught by the derogation.
10. 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)*

11. 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 FOIA. His role is to consider whether the information was genuinely held for the derogated purposes or not.
12. 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.
13. The Court of Appeal adopted the Tribunal's definition of journalism which set out that journalism comprises three elements.

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

2. 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.*

3. 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."

14. The Commissioner adopts a similar three pronged 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.
15. The information that has been requested in this case relates to the costs, and related expenses, incurred by the BBC to broadcast output of, and concerning, the Royal Wedding.
16. In light of submissions made by the BBC in previous cases and mentioned in the refusal notice, the Commissioner considers the second

element of journalism within the definition above - the editorial process, as relevant in this case. The Commissioner understands that the creative output of the BBC in relation to events such as state visits and other royal ceremonies is directly influenced by the allocation of funds which are, in turn, determined by editorial decisions. The costs incurred by the BBC to cover the Royal Wedding are not unique and the requested information is valuable to the BBC for similar logistical scenarios in the future. Such events are subject to change based on a rolling programme of news. The Commissioner 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 the Royal Wedding will feed into future events of a similar nature. The information requested assists the decision making process, including the viability of coverage, for future productions. 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.

17. In this case the Commissioner finds that the information relates to the enhancement of the standards and quality of journalism which falls within the third paragraph of the Tribunal's definition of what 'journalism' means. The information allows the BBC to review the quality of similar programmes and the costs incurred. The information allows the work of editors to be critiqued, from within the BBC, against other similar events. The Commissioner acknowledges that the information retained in this case is therefore likely to be used by the BBC to review and improve its performance.
18. The Commissioner has considered all of the information before him, but for conciseness he has focussed on explaining why he considers that the information requested falls within the derogation.
19. In considering whether information is held genuinely for the purposes of journalism, the Commissioner has considered the following three factors:
 - The purpose for which the information was created;
 - The users of the information;
 - The relationship between the information and the programmes content which covers all types of output that the BBC produces.
20. The information requested relates to costs associated with the broadcast of the Royal Wedding. The information was created in order to facilitate the allocation of funds for the production of output. It follows that this criterion supports the BBC's contention that the information was held for

the purposes of journalism. The Commissioner has accepted on a number of occasions (such as in case reference **FS50314106**) that the BBC has a fixed resource in the Licence Fee and resource allocation goes right to the heart of creative decision making. The Commissioner is satisfied that the same rationale connects the information to the derogated purposes.

21. The allocation of funds influences editorial decisions and for this reason the Commissioner finds that records of expenditure can be linked directly to the programme content.
22. The users of this information include the editors responsible for coordinating the creative output of similar events. For the same reasons as above, the relationship continues beyond the time that the programme was broadcast.
23. After considering all the information in this case, the Commissioner finds that the BBC genuinely holds the information for the purposes of journalism. Therefore, the BBC was not obliged to comply with Parts I to V of the 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

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