

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 April 2014

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

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

### Decision (including any steps ordered)

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1. The complainant has requested information broadly concerning employees currently suspended, on gardening leave or absent from work due to sickness.
2. The Commissioner's decision is that the BBC has correctly applied the exemption set out at section 12 of FOIA. However, he also considers that the BBC has not met the requirements of section 10.
3. The Commissioner requires the public authority to take no steps.

### Request and response

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4. On 18 January 2013, the complainant wrote to the BBC and requested information in the following terms:
  1. (a) *Can the BBC currently state how many employees are suspended from work and or on gardening leave?*
  - (b) *How many of these employees are currently in receipt of full pay?*
  - (c) *How many of these employees are currently in receipt of anything other than full pay?*
2. *Can you please state the total amount paid to these employees during their suspension and or term of their gardening leave. I am looking for a single overall figure.*

3. (a) *Can the BBC please state how many employees have been suspended and or on gardening leave for a month or more?*  
  
(b) *In the case of each of the employees can you please state for how long they have been suspended and or on gardening leave?*
4. (a) *Can the BBC please state how many employees are currently on sick leave from work?*  
  
(b) *How many of these employees are currently in receipt of full pay?*  
  
(c) *How many of these employees are currently in receipt of anything other than full pay?*
5. *Can you please state the total amount paid to these employees while they have been off sick?*
6. *Can you please indicate how many employees have been off sick for a month or more? In each case can you please state for how long they have been off sick?.*
5. On 20 February 2013 the complainant emailed the BBC and explained that he had not received a response to his information requests and therefore he would like an internal review to be carried out.
6. The BBC responded on 23 March 2013. It stated that section 12(1) of FOIA applied to requests 1, 2, 3 and 4 (c). The BBC provided a response to request 4(a), 4(b) and 5 and in response to request 6, the BBC explained the information was exemption from release under section 40 of FOIA.
7. The complainant subsequently requested an internal review on 28 March 2013. He argued that to comply with requests 1, 2, 3 and 4 (c) would not exceed the costs limit for the purposes of section 12.
8. Following an internal review the BBC wrote to the complainant on 20 June 2013. It acknowledged its failure to answer the request within the 20 working days as set out by the FOIA. It also acknowledged its failure to keep the complainant updated and advise that there would be a delay. It subsequently confirmed that it upheld its previous decision that section 12(1) of FOIA applied to request 1, 2, 3 and 4 (c).

## **Scope of the case**

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9. The complainant contacted the Commissioner on 22 October 2013 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether the BBC was correct to apply section 12 of FOIA to requests 1, 2, 3 and 4(c).

### **Reasons for decision**

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11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations.)
12. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - a. determining whether it holds the information;
  - b. locating a document containing the information;
  - c. retrieving a document containing the information; and
  - d. extracting the information from a document containing it.
14. The four activities are sequential, covering the retrieval process of the information by the public authority.
15. The BBC explained that to comply with request 1, 2, 3 and 4(c), it would exceed the appropriate cost limit. It provided the Commissioner with the following submissions to support its application of section 12.

### **Requests 1, 2 and 3 – details about employees suspended and or on gardening leave**

16. The BBC stated that it maintains a central database only where it logs and monitors formal cases dealt with under its bullying, harassment, grievance and disciplinary policy. This database consists of very generic information containing only the individual's name, the reason for the disciplinary, the date the case was opened and the final outcome.

17. The BBC confirmed that it holds no central record or database that records employees who are currently suspended or on gardening leave. It explained that such cases are managed locally, on a case by case basis, with records being held on individual employee files and/or by local HR teams in accordance with business need. The BBC has confirmed that there are 50 Human Resource Business Partners (HRBP) that on average deal with 380 employees each.
18. The BBC explained that it would have to contact each HRBP to locate the requested information. Each HRBP would then have to scrutinise the individual employee files to locate the information within the scope of request 1, 2, 3 and 4(c).
19. The Commissioner subsequently returned to the BBC to seek further information as to why it would be necessary to look through each individual employee personnel file.
20. The BBC explained that although it maintains a central database where it logs and monitors formal cases dealt with under its bullying, harassment, grievance and disciplinary policy, it may not contain correct and sufficient details of an employee's suspension. It further explained that not all suspensions may be logged on the database and therefore it would have to check individual employee files to ensure accuracy. The BBC also explained that the central database does not contain information on the duration of the suspension. A consequence of this is that even if the information regarding the numbers of employees currently suspended or on gardening was held on the central database, it would need to cross reference this information to individual employee files to determine the actual dates of suspension and whether or not the suspension was current at the time of the request.
21. The BBC explained it was unable to run a date field search across this database in order to pull up details of those BBC employees who are 'currently suspended from work'. It also explained that it is not mandatory for local HR teams to enter details of suspensions onto the central database. A consequence of this is that the information on suspensions on this database would be patchy and would not provide an accurate account of current suspensions.
22. The BBC confirmed that information on employees currently on gardening leave is not held on the central HR system and are managed and recorded entirely locally on individual employee personnel files. Therefore to locate and extract this information along with employees currently suspended, a search of individual employee personnel files would be necessary.

23. The BBC confirmed that individual employee personnel files which are held by local HR teams are mostly electronic and they can contain scanned PDF documents relating to the employee. However, it stated that although a copy of every BBC employee's personnel file should exist, it cannot guarantee that all employee personnel files are held electronically. It confirmed that some paper files do remain.
24. The BBC has explained that its system is built on a Microsoft SharePoint platform. A result of this is that there is no 'Google' search facility that is capable of scanning across the electronic documents to pick up files that contain the word 'suspension' or 'gardening leave'. It further explained that even if it could do a search for the information, any scanned PDF copies would not be located by the search.
25. From this, the BBC states that a manual search of all individual employee personnel files would be appropriate and necessary.
26. In relation to the complainant's requests 1(b), 1(c) and 2, the BBC explained that employee salary details are held on a HR database. To locate the information sought in these requests, the BBC would have to search the HR database to locate salary details of the employee. It would then have to interrogate individual employee personnel files to determine the duration of the suspension or gardening leave. Once this information had been collected, the salary figure and duration of suspension/gardening leave would need to be calculated to determine whether the employee was being paid in full or anything other than full pay. Once this process had been done for each employee, the figures would need to be calculated together to satisfy request 2. Although the Commissioner accepts calculating a total figure is straight forward and would not take much time, determining the information to be calculated would be a lengthy process.
27. With reference to request 3, the BBC stated this information is held on individual employee personnel files and therefore it would need to examine these files to locate and extract this information. It explained that to do this it would exceed the appropriate cost limit.
28. To support its position, the Commissioner asked the BBC to contact 5 – 10 HRBP to do a sample search for the information to determine how long it would take to locate and extract the information.
29. The BBC identified two methods by which it could extract the requested information.  
*Method one*
30. The BBC could manually check electronic employee personnel files for suspension/ garden leave/ phased return periods and records dates. It

would take five minutes to look through each employee personnel file for this information.

31. The BBC would then have to cross check against the Central HR/Payroll system to ascertain whether the employee is in receipt of full pay or anything other than full pay. It would then have to calculate the pay for the duration suspended or on gardening leave. The BBC explained this activity would take a further five minutes.
32. As the BBC has approximately 19000 employees, it calculated the time to locate and extract this information to take 190,000 minutes or 3166 hours.
33. The Commissioner must note that even if it took the BBC one minute to carry out this method for each employee, it would still exceed the appropriate cost limit.

*Method two*

34. The BBC did a sample search on 6 HRBP's using method two. This method involved the central BBC HR team to liaise with HRBP to obtain the information requested from local HR managers/local HR advisors and if necessary local line managers to identify the relevant individuals. The BBC stressed that by doing this method it would identify the individuals concerned only by way of local knowledge/word of mouth.
35. The BBC confirmed that the names of those employees who were suspended/on gardening leave/phased return with local HR managers/local line managers. The relevant electronic employee personnel file was retrieved and the dates of absences were extracted. A cross reference of the central HR/payroll system was then carried out to determine whether the absence was paid, unpaid or variable under a phased return. The BBC explained that where a variable rate existed, a daily rate of pay was calculated in order to work out the total cost of each employee absence to the BBC.
36. The BBC stated that the sample search results for each of the 6 HRBP's returned an average of three hours of staff time in generating the information requested. As there are 50 HRBP the BBC calculated  $50 \times 3 = 150$  hours. The BBC again reiterated its position that the time it would take to locate this information is well in excess of the fees limit that is set out in the Fees Regulation.
37. The Commissioner must note that relying on 'local knowledge/word of mouth' to locate and extract the requested information in this case is a risky approach to adopt and it is not reliant on recorded information.

**Request 4 (c) – details about employees currently on sick leave**

38. The BBC explained that the HR database records employees who are absent from work for reasons of sickness. From this database it confirmed to the complainant that 198 employees were currently absent from work for the reasons of sickness. From this database it was also able to confirm the number of employees that were being paid or unpaid for the absence. The HR database does not provide specific information such as information relating to whether an employee is receiving half pay etc. The BBC explained that to determine whether any employees were paid anything other than full pay; it would have to interrogate individual employee personnel files. It explained that details about the sickness such as temporary adjustments made to an employee's pay would be held solely on individual employee files.
39. It explained that the location and extraction of this information could be included in the activities and the time taken described under the heading '*method one*' at paragraph 30 - 32.
40. From the submissions provided by the BBC the Commissioner would consider that to comply with requests 1, 2, 3 and 4(c) would exceed the appropriate limit.
41. In reaching his decision the Commissioner is mindful that although the complainant's request is for specific information, the amount of individual employee personnel files that have to be considered is significant.
42. The Commissioner notes that, at first glance, there may be an expectation that the BBC would hold a central database that records the information sought within the requests. However, given the submissions he has received, the Commissioner considers that to comply with requests 1, 2, 3 and 4(c) would exceed the appropriate limit.

## **Procedural matters**

### **Section 10 – time for compliance**

43. Section 10 states that "*a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day*". In this case the BBC did not response to the request within 20 working days and clearly breached section 10.

## **Other matters**

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44. The Commissioner's guidance explains that when a public authority receives an internal review request, it should ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
45. The Commissioner notes that in this case the BBC took over 40 days to respond to the internal review request. The Commissioner would advise the BBC to follow his guidance on this matter to ensure good practice when dealing with internal review requests.



## Right of appeal

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46. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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 .....**

**Rachael Cragg**  
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