

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2014

Public Authority: British Broadcasting Corporation

Address: White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested the names of staff involved in an incident at one of the BBC's offices. The BBC stated that the information was not held due to the time elapsed and the staffing changes that had occurred.
2. The Commissioner's decision is that on the balance of probabilities the BBC does not hold the requested information.

Request and response

3. On 28 January 2014, the complainant wrote to the BBC to ask for information following an incident that occurred at the BBC's Wood Lane building on 14 February 2012. The request was for the following information:

"Under the Freedom of Information Act 2000 I have the right to know the names of that woman and her manager."

4. The BBC responded on 28 February 2014. It stated that after attempting to locate the information it had concluded that it was not held. The BBC then explained that in the event that the information was held it would consider it exempt on the basis of section 40(2) of the FOIA.
5. On 26 March 2014 the complainant asked for an internal review of this decision, raising concerns that the BBC cannot state an individual would

not want their information to be disclosed if the information cannot even be located.

6. Following an internal review the BBC wrote to the complainant on 6 May 2014. It stated that the use of the section 40(2) exemption was academic as the BBC did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 12 June 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if the information is held by the BBC and if so whether it has been correctly withheld under section 40(2).

Reasons for decision

Section 1 – information not held

9. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
10. The request was for the names of two members of staff involved in an incident at the BBC. This followed a visit to White City by the complainant in which he subsequently complained about the way he was spoken to by a BBC receptionist.
11. The BBC has firstly explained that the incident occurred in February 2012 and his information request was not made until nearly two years later. The Commissioner considers this to be a relevant consideration when determining if, on balance, the information is held; as the length of time that has elapsed will have hindered the BBC's ability to conduct searches, particularly when the staff involved were provided by a facilities management company.
12. In determining whether the names of the receptionist and their manager on that day could be located the BBC firstly asked the department responsible for the day-to-day running of the BBC estate to make enquiries with the facilities management company at the time of the incident.

13. The BBC explained that the facilities management company were unable to provide the names of the staff which may be due to the fact that the BBC were in the process of changing its facilities management company at the time the incident occurred. As such there was a large movement of staff within the facilities management company and no one was able to identify the specific staff working on reception on that day.
14. Following the Commissioner's involvement with the complaint, the BBC undertook some further investigations to determine if the identities of the staff could be determined. The BBC made enquiries with its Operation Manager and was able to ascertain that the receptionist's manager would have been one of two people. One of these individuals was from the facilities management company and the other had since left the BBC.
15. Through these same channels of enquiry, the BBC has also been informed of the possible identity of the receptionist. However, it is not clear whether this person would have actually been on reception at the time of the complainant's visit. This is because the reception at the BBC building was covered by one of several female members of staff at any given time. Some of these staff were from within the BBC's reception area and, as established, some were from the facilities management company.
16. Due to the number of staffing changes, the change in the provider of facilities management and the time that has passed since the alleged incident the BBC has concluded it is not able to determine specifically who the complainant spoke to on the day he visited the BBC building.
17. Based upon the submissions provided by the BBC the Commissioner is satisfied that the enquiries made by the BBC to establish the identities of the receptionist and manager were appropriate and sufficient. The Commissioner recognises the difficulties experienced by the BBC in trying to trace back who may have been on the reception on that day due to the time that had elapsed and the significant changes in personnel that had occurred.
18. The Commissioner has considered the BBC's position that it can narrow down the potential managers to two individuals in the case of the manager and several individuals in the case of the receptionist. In its responses to the complainant, the BBC had indicated if it was able to identify the individuals it would consider the information to be exempt on the basis of section 40(2).
19. The Commissioner is of the view that the BBC's citing of section 40(2) was misleading as this is a matter of whether the information is held or not. In the case of the manager where the BBC considers it is one of two

individuals, the BBC may be in a position to say which of the two individuals it is more likely to be. However, as it cannot say with any absolute certainty the Commissioner is minded to accept that the information is not held. This is not a matter of making a judgement on whether the information is accurate as it is not possible for the BBC to provide the name of the manager or the receptionist if there is any doubt as to whether it is the correct individual.

20. The Commissioner has therefore concluded that the BBC cannot provide the name of the receptionist or manager with any degree of certainty as to their identities. As such, on the balance of probabilities, the information is not held by the BBC under section 1(1)(a). The Commissioner has therefore not gone on to consider the application of section 40(2).

Right of appeal

21. 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@hmcts.gsi.gov.uk

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

22. 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.
23. 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

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