

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 August 2021

**Public Authority:** British Broadcasting Corporation  
**Address:** BBC Broadcasting House  
Portland Place  
London  
W1A 1AA

#### **Decision (including any steps ordered)**

---

1. The complainant has requested a copy of the security review that the BBC conducted following the stabbing of a performer at a Radio 1Xtra Live event. The incident occurred at Arena Birmingham on 5 October 2019.
2. The BBC withheld this information under section 31 (law enforcement) of the FOIA.
3. The Commissioner's decision is that section 31 does not apply to all the information which the BBC is withholding.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - To disclose the information which does not engage the exemption provided by section 31. This information is identified in a confidential annex which has been provided solely to the BBC.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

6. On 4 November 2020, the complainant wrote to the British Broadcasting Corporation ('BBC') and requested information in the following terms:

*"Please can you tell me if any review/investigation was carried out by the BBC following the stabbing of [Redacted] at a 1Xtra gig in Birmingham? The incident took place in October 2019 at Arena Birmingham.*

*I require the details of any attempts made by the BBC to review the incident and a copy of any subsequent report.*

*I also require details of any follow up care provided to [Redacted].*

7. The BBC responded on 25 November 2020. It stated that it was withholding the requested information under section 31.
8. Following an internal review the BBC wrote to the complainant on 7 December 2020. It upheld its original position and clarified that it was specifically relying upon section 31(1)(a) (the prevention or detection of crime and section 31(1)(b) (the apprehension and prosecution of offenders).
9. The BBC clarified that it held information relating to the follow up care that [Redacted] received. However, the BBC explained that disclosure of this information would be a decision for the performer themselves as this information represents their special category data.
10. The BBC also clarified that it could not disclose the police crime reference number relating to the incident as this information would be held by the police.

## Scope of the case

---

11. The complainant contacted the Commissioner on 30 December 2020 and explained that they were satisfied with the BBC's explanation as to why it was withholding information relating to the follow up care that [Redacted] received.
12. However, the complainant was concerned that the BBC had mistakenly interpreted their request for information to include the police crime reference number relating to the incident. The Commissioner acknowledges that this appears to be a misinterpretation of the complainant's request.

13. The complainant was also concerned that the BBC had failed to disclose any information that fell within the scope of their request, i.e. the security review. For the purposes of this notice, the security review will be known as 'the report.'
14. The Commissioner therefore considers the scope of her investigation to be to determine if the BBC has properly engaged section 31 and if the public interest lies in maintaining the exemption or in disclosure of the report.

## Reasons for decision

---

### Section 31 – Law enforcement

15. Section 31 of the FOIA states that:
  - (1) "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
    - (a) the prevention or detection of crime
    - (b) the apprehension or prosecution of offenders."
16. In order for a public authority to properly engage a prejudice based exemption such as section 31, in this instance both 31(1)(a) and 31(1)(b), there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to avoid. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
17. Consideration of the section 31 exemption is a two-stage process. Firstly the exemption must be properly engaged and meet the three criteria listed above. Even if this is the case the information should still

be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

18. The Commissioner's guidance "*Law Enforcement, Section 31*,"<sup>1</sup> states that the exemption be engaged by a public authority 'without any specific law enforcement responsibilities,' such as the BBC.
19. In its submission to the Commissioner, rather than differentiate between the subsections of the exemption, the BBC has presented one set of arguments. There is clearly significant overlap between subsections 31(1)(a) and 31(1)(b) and therefore the Commissioner has considered the BBC's arguments in support of these subsections together.

### **The applicable interests**

20. Returning to paragraph 16, the BBC has outlined how it considers disclosure of the report, which includes sensitive information about security arrangements specific to the Arena Birmingham and to the BBC's operations, would undermine the prevention or detection of crime and the apprehension or prosecution of offenders. The BBC has also outlined that disclosure of the report would undermine the ongoing police investigation into the incident.
21. The Commissioner's guidance states that '(Section 31) could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.' The Commissioner is therefore satisfied that the arguments presented by the BBC outline how disclosure would prejudice the applicable interests within the relevant exemption.

### **The nature of the prejudice**

22. The Commissioner must now consider if there is a causal link between the information contained within the report and the prejudice that sections 31(1)(a) and 31(1)(b) are designed to protect. Although a public authority will not necessarily be able to provide evidence in support of this causal link, the Commissioner must be satisfied that disclosure is practically and logically capable of harming the interest in some way.

---

<sup>1</sup> [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](https://ico.org.uk/law-enforcement-foi-section-31.pdf)

23. As part of her investigation, the Commissioner has reviewed the report in question. The report includes: the initial risk assessment of the event, the security measures that were in place, the background to the security incidents that occurred, the lessons learned and recommendations for future events in the light of the security incidents.
24. At the beginning of this investigation the Commissioner asked the BBC to clearly indicate where it specifically considered the exemptions applied in relation to the withheld information. However, the BBC failed to do so.
25. The BBC has explained to the Commissioner that 'the report has been produced in the context of the BBC Safety, Security and Resilience team's overall procedures and processes for the management of safety and security at BBC events, including the BBC Threats to Life Process, the Access Management Plan and the Event Management Plan.'
26. The Commissioner notes that the report contains both information relating to general security processes and procedures and information which is specific to the incident and Arena Birmingham. The BBC is concerned that disclosure would be likely to undermine the future efforts of both the venue and the BBC to organise safe and secure public events and would potentially jeopardise the ongoing police investigation into this incident.
27. The report also contains recommendations for enhanced security measures at future similar events. The BBC is concerned that disclosure of this information into the public domain could be exploited by individuals with criminal intent and thus undermine the prevention or detection of crime.
28. The Commissioner accepts that information which is specific to the incident in question may jeopardise the ongoing police investigation into this matter as some of this information is not already in the public domain.
29. For example, the report makes reference to specific individuals, some named, who are suspected to be involved in the incident and who are potential suspects in the ongoing police investigation. The Commissioner concurs with the BBC's concerns that disclosure could provide these individuals with the opportunity to disguise their involvement in these events or develop techniques to avoid detection in the future, thus undermining the apprehension or prosecution of offenders.
30. The Commissioner also considers that information that is highly specific to Arena Birmingham and BBC security processes would be likely to

undermine the future efforts of both the venue and the BBC to organise safe and secure public events in the future.

31. However, the Commissioner notes that some of the information contained within the report, such as the lessons learnt and recommendations made as a result of the incident, is obvious in light of a security incident.
32. Furthermore, some of the information contained within the report is already in the public domain as a result of media attention. With this in mind, the Commissioner fails to see how disclosure would be likely to undermine the future efforts of both the venue and the BBC to organise safe and secure public events and, in turn, prejudice the prevention and detection of crime and the apprehension and prosecution of offenders.

### **Likelihood of the prejudice**

33. The BBC has explained that it has applied the exemption on the basis of the lower threshold of prejudice, that disclosure 'would be likely' to result in prejudice. ICO guidance, *'The Prejudice Test'*<sup>2</sup> defines this lower threshold as 'there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.'
34. The BBC has explained that it considers the possibility of prejudice occurring to be a real risk, especially in the context of gang-violence and possible retaliation should the report be placed in the public domain.

### **Is the exemption engaged?**

35. The Commissioner does not consider that all of the information contained within the report is captured by the exemption and she is concerned that section 31 has been applied in a blanket fashion.
36. As previously stated, the incident was widely reported upon and the Commissioner has compared the withheld information to that which is in the public domain. The report contains information which the complainant, and the general public, is already aware of. This is evident by virtue of the request itself.

---

<sup>2</sup> [the prejudice test.pdf \(ico.org.uk\)](https://ico.org.uk/the-prejudice-test.pdf)

37. Furthermore, the request contains information relating to general security processes and procedures. The Commissioner is of the opinion that details of these processes are so general, and common sense, that it would not make BBC live audiences more vulnerable to crime and therefore no causal link exists between disclosure and the prejudice that section 31 is designed to protect.
38. With this in mind, the Commissioner has provided the BBC with a confidential annex which separates the information that the Commissioner considers to engage the exemption and that which does not. The confidential annex has been produced to identify what information should be disclosed in response to this request.

### **Public interest test**

#### Public interest in disclosing the information

39. Returning to paragraph 35, the Commissioner does not consider all information within the report exempt from disclosure. If the Commissioner has ordered the disclosure of specific information there is no public interest to consider.
40. Where the Commissioner is satisfied that the exemption is properly engaged, she must consider the public interest arguments. The BBC has acknowledged the general principles of accountability and transparency that underpin the FOIA as factors in favour of disclosure. Expanding on this, the BBC has acknowledged there is a specific public interest in how the BBC investigates incidents, and the recommendations it makes as a result of such incidents, using public funds.
41. The BBC has also acknowledged that, as the incident was widely reported upon, disclosure may provide the public with reassurance regarding the steps taken by the BBC, and the security measures implemented in light of the incident, to safeguard audiences at BBC live events and Arena Birmingham.

#### Public interest in maintaining the exemption

42. The BBC considers that it is in the public interest not to allow individuals involved in criminal activity, such as those referenced within the report, to evade justice, or to exploit any gaps in security to commit crime in the future. Once again the BBC has identified the ongoing police investigation into the incident as a factor in favour of maintaining the exemption.
43. The BBC also considers there is an inherent public interest in the prevention and detection of crime and the apprehension and prosecution of offenders. The BBC is concerned that disclosure may set

a precedent for the future in which the BBC is expected to disclose security reviews and similar reports. The BBC is concerned that this may hinder its ability to conduct investigations and make future security recommendations.

### Balancing the public interest

44. Having considered the competing public interest arguments, the Commissioner has decided that the public interest favours maintaining the exemption. Keeping in mind the ongoing police investigation into this matter, the Commissioner concurs with the BBC when it says that placing information relevant to such an investigation into the public domain would be likely to undermine this investigation.
45. Furthermore, the Commissioner notes the specifics within the report that relate to the Arena Birmingham and specifically, its security procedures and measures. The Commissioner concurs with the BBC that disclosure of this information would be likely to undermine both the efforts of the BBC and the Arena in hosting events that are as secure as possible which is not within the public interest. The Commissioner is particularly mindful that disclosure of the report, which is disclosure to the world-at-large, may allow individuals with criminal intent to exploit any existing or remedial measures put in place as a result of the incident. Bearing in mind that the Arena Birmingham has a capacity of 15,800, the Commissioner considers that these arguments carry significant weight.
46. The Commissioner is also mindful that the BBC has fully cooperated with the police's investigation and any information contained within the report will have been used to inform said investigation. The Commissioner therefore does not consider that there is any addition to public safety to be obtained from disclosure of this information.

### **The Commissioner's view**

47. The Commissioner agrees with the complainant that there is a public interest in understanding how the BBC combats security breaches at its live events, how it manages the safety of its live audiences and how it spends license-payer monies.
48. However, she does not consider that the public interest in information which relates to the incident in question or Arena Birmingham outweighs the public interest in the safeguarding of live audiences. Therefore, she has determined that the public interest lies in maintaining the exemption.



## **Other matters**

---

49. Returning to paragraph 43, the Commissioner's guidance '*The right to recorded information and requests for documents*'<sup>3</sup> states 'authorities have to consider the release of information within a document, rather than taking a document by document approach and withholding whole documents when only some of the information is exempt.'

---

<sup>3</sup> [the-right-to-recorded-information-and-requests-for-documents.pdf \(ico.org.uk\)](https://ico.org.uk/the-right-to-recorded-information-and-requests-for-documents.pdf)

## **Right of appeal**

50. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

51. 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.
52. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**