

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

### **Decision notice**

**Date:** 29 September 2023

**Public Authority:** British Broadcasting Corporation ("the BBC")

**Address:** BBC Broadcasting House  
Portland Place  
London  
W1A 1AA

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

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1. The complainant requested information from the BBC about BBC Verify and related information. The BBC responded that the requested information was covered by the derogation and hence excluded from FOIA.
2. The Commissioner's decision is that this information, if held at all, is held by the BBC for the purposes of journalism, art or literature and so was not covered by FOIA. He therefore upholds the BBC's position and requires no steps to be taken in this case.

#### **Request and response**

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3. On 21 July 2023 the complainant wrote to the BBC and requested information in the following terms:

"Please provide full details and all documents relating to the following:

1. The strategy behind the planning of BBC Verify and its purpose including but not limited to any particular focus of the department;
2. The full list of the sixty BBC Verify journalists and their salaries and other benefits associated with their BBC Verify position;
3. All costs to date relating to the BBC Verify project including anything not already requested in point 2 above including but not limited to office costs for hosting the department and IT costs;
4. The estimated annual budgetary costs for the BBC Verify project going forward;
5. Why and how Marianna Spring was chosen to lead BBC Verify and

the particular aspects of her experience and skills that made her the successful recipient of this position;

6. How the other journalists involved in the BBC Verify project were chosen and the criteria for the same, including any processes followed and whether they were chosen from the existing ranks of BBC employees or were newly recruited;

7. What steps have been taken to ensure the diversity of views of the journalists chosen for the BBC Verify project; and

8. Whether there are any plans for BBC Verify to partner with any other organisations or entities and, if so, which organisations or entities..”

4. On 25 July 2023 the BBC responded to the request. The BBC explained that it did not believe that the information was caught by FOIA because it was held for the purposes of “art, journalism or literature”.
5. It therefore would not provide any information in response to the requests.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 18 August 2023 to complain about the way the request for information had been handled. In particular, they challenged the operation of the derogation in this case.
7. The scope of this case and the following analysis is to determine whether the information requested is excluded from FOIA because it was held for the purposes of “journalism, art or literature”.

### **Reasons for decision**

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8. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held.
9. FOIA only applies to the BBC to a limited extent. Schedule One, Part VI of FOIA provides that the BBC is a public authority for the purposes of FOIA but it 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.”

10. This is known as the "derogation". This means that information that the BBC holds for the purposes of journalism, art or literature - in broad terms, its output or related to its output - is not covered by FOIA. If information falls within the derogation, then that is the end of the matter; there is no public interest test or similar provision to consider the merits of disclosure.
11. Certain information that the BBC may hold is derogated because, although it is publicly funded through the licence fee, the BBC commercially competes with other broadcasters who are not subject to FOIA. Releasing information about its output, or related to its output, could therefore commercially disadvantage the BBC.
12. Broadly, BBC information that is covered by FOIA includes information about: how the BBC is managed and run, including the TV licence; the BBC's employees and its human resources practices; and the BBC's performance.
13. BBC information that is not covered by FOIA includes the following: information about the BBC's on-screen or on-air "talent" including its presenters and journalists; information about BBC programmes including any spend or editorial decisions associated with its programming; materials that support the BBC's output, such as the script of a television programme or a source drawn on for an investigation; and viewer and listener complaints to the BBC about the above.
14. The derogation as it applies to the BBC is discussed in more detail in numerous published decisions made by the Commissioner, such that he does not consider it necessary to reproduce that detail again here. However, key to the derogation is the Supreme Court decision in *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC 4<sup>1</sup>
15. The Supreme Court explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.

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<sup>1</sup> <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

16. The Commissioner adopts a similar 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.
17. The complainant argued that "the information requested is operational in nature, related to the general everyday running and intended direction of the BBC Verify service. It is, in that sense, not concerned with or proximate to the actual output that will be generated by BBC Verify at all. Accordingly, the subject matter of the information requested lacks any sufficiently close nexus with BBC Verify's output to fall within the journalistic derogation (and any contrary reading would, it is submitted, involve too broad a construction of the derogation)". They also argued "that the announcement heralding the BBC Verify service, set out at the outset of these submissions, stressed that its purpose was to build trust by showing 'transparently' how the Respondent's journalists 'know the information they are reporting'. This commitment to transparency is laudable; its lack of extension to, and the refusal to disclose, the matters forming the subject-matter of the FOIA request is, respectfully, not lawful".
18. Information about BBC Verify is used for editorial management and maintenance of standards of its news services or verifying news stories, essentially it is monitoring its own standards which would be used by the editors of it to ensure that the selection and balance of it reflected the output objectives of the platform.
19. Therefore, the information requested is also held for the purposes of enabling producers to assess the success, or otherwise, of BBC Verify in enhancing BBC journalist output. To enable this success to be judged, the information is necessary for editors to make decisions that enhance output. In addition, the information about costs is used by the BBC as part of the process in allocating a fixed resource to produce its complement of broadcasted output.
20. As explained above, this information would be associated with the BBC's output because any costs and decisions on BBC Verify would be held for the purposes of editorial matters. A review of this information relates to editorial decisions about programming, and the enhancement of the standards and quality of journalism. This would likely be related to the BBC's output if held at all.
21. The Commissioner is satisfied, based on the very well established precedent set in the numerous other decisions he has made in cases involving the BBC, that, if held at all, the information requested by the complainant would be held for the purposes of journalism, art or literature.

22. The Commissioner finding is, therefore, that the BBC was not obliged to comply with the complainant's information requests.

## Right of appeal

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23. 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)

24. 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.
25. 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 .....**

**Amie Murray**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**