

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2024

Public Authority: Ofcom

Address: Riverside House, 2A Southwark Bridge Road,
London, SE1 9HA

Decision (including any steps ordered)

1. The complainant has requested Ofcom to disclose information relating to two complaints raised with it about the BBC. Ofcom disclosed the recorded information it holds.
2. The complainant disputed that all the recorded information Ofcom holds has been disclosed. The Commissioner's decision is that on the balance of probabilities Ofcom does not hold any further recorded information to that already provided. He does not require any further action to be taken.

Request and response

3. The complainant wrote to Ofcom (correspondence received on 31 July 2023) and requested information in the following terms:
 - 1) Whether an investigation has been carried-out by Ofcom into the complaints raised under Ofcom complaints reference nos. 01565823 and 02566633, and, if not, whether any former BBC employees were involved in the decision not to investigate;
 - 2) whether, in relation to whichever of these two complaints relates to Canadian trucker protest coverage, Ofcom requested the BBC to supply the relevant audiovisual footage;

- 3) all guidelines and instructions issued to all Ofcom caseworkers, including those who review the decisions and responses of others, on how to deal with complaints of (a) bias and (b) inaccuracy (whether specific to the BBC or not) including the criteria used to determine whether or not to launch an investigation.”
4. Ofcom responded on 21 August 2023. It provided a response to each element of the request. In relation to question one, it addressed the two complaint references and explained what had happened and outlined the specific issue number of its Broadcast and On Demand Bulletin where each decision was reported. It confirmed that no former BBC employees were involved in the decision on either case. In respect of question two, it confirmed that Ofcom obtained a recording of all the relevant material from the BBC. Concerning question 3, it directed the complainant to its published procedures and section 5 of the Broadcasting Code.
 5. The complainant wrote to Ofcom to request an internal review. This was received by Ofcom on 20 September 2023. They raised concerns with questions one and three of their request.
 6. Ofcom carried out an internal review and notified the complainant of its findings on 18 October 2023. It provided further explanation in relation to question one but essentially upheld its handling of the information request under FOIA.

Scope of the case

7. The complainant wrote to the Commissioner on 9 November 2023 to complain about the way their request for information had been handled. They raised concerns with Ofcom’s handling of all three questions. In relation to question one they asked to be provided with specific bulletins, referenced in the additional explanation Ofcom provided about the publication of the outcome of the complaints referred to in question one. For question two they asked to know exactly what footage was obtained and to know more specifically if the footage from the 11:12 broadcast had been obtained. In respect of question three, they disputed that they had been provided with all the recorded information Ofcom holds and confirmed that they felt caseworkers must refer to other internal guidelines or instructions when considering complaints about bias/fairness or inaccuracy.
8. The Commissioner wrote to the complainant on 14 March 2024 to set out the scope of his investigation. He informed the complainant that their request for specific bulletins and to know exactly what footage was obtained does not fall within the scope of their original request. The complainant was advised that these were new requests for additional

information and they would need to be submitted to Ofcom as new requests in the first instance.

9. The Commissioner advised the complainant that he could therefore only consider question three and whether Ofcom holds any further recorded information to that already provided. This has been the scope of his investigation and the following section of this notice will outline the Commissioner's decision.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
11. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
12. The Commissioner made the necessary enquiries to Ofcom and it confirmed that it does not hold any further recorded information in connection with question three of the request. It only holds the information it has already directed the complainant to.
13. It stated that the publicly available information on its website, to which it directed the complainant, is the only recorded information it holds and used by Ofcom colleagues when considering complaints, such as those of bias, fairness and/or inaccuracy. In terms of decision making on individual cases, in addition to the published policy and guidance documents, colleagues may take into account, where relevant and appropriate, previous decisions in similar cases. These cases are published on Ofcom's website in its Broadcast and On Demand Bulletins. Ofcom advised, for the avoidance of doubt, Ofcom colleagues do not refer to any recorded, but unpublished, information when considering complaints.
14. Ofcom said that it holds one set of policies and guidance, which are published, as to do otherwise would be contrary to the principles of transparency and fairness. Holding unpublished policies and guidance would also be contrary to its regulatory principles, a key principle being

that its regulatory interventions are transparent in both deliberation and outcome. Furthermore, it commented that Ofcom is prohibited by public law principles from operating unpublished policies which are inconsistent with those which it publishes.

15. Ofcom concluded by saying that it has not therefore carried out any further searches, as it is absolutely certain for the reasons given above that no further recorded information exists.
16. The Commissioner is satisfied that on the balance of probabilities Ofcom does not hold any further recorded information falling within the scope of question three of the complainant's request. It has explained sufficiently the exact recorded information it holds and what information caseworkers will use and consult when making decisions on individual cases. It has confirmed that everything that it does hold is published on its website and it directed the complainant to that information.
17. There is no reason to doubt Ofcom's position in this case and the Commissioner has received no evidence to the contrary.
18. For the above reasons, the Commissioner is satisfied that Ofcom has complied with the requirements of FOIA and therefore no further action is required.

Right of appeal

19. 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

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

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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