

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 May 2024

Public Authority: Channel Four Television Corporation
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant has requested information relating to Channel Four Television Corporation's (Channel 4) financial commitment to the Creative Industries Independent Standards Authority (CIISA). Channel 4 refused to provide the information on the basis of section 43(2) of FOIA (Commercial Interest).
2. The Commissioner's decision is that Channel 4 was correct to apply section 43(2) to withhold the information. He does not require the public authority to take any further steps.

Request and response

3. On 14 August 2023, the complainant wrote to Channel 4 and requested information in the following terms:

"Please tell me how much money Channel 4 has already given, and how much it has committed to give in the future, to the CIISA. For further information please note the part of the CIISA's website where it says:

"We are grateful to Sky, BBC, ITV, Channel 4, and Viacom for their initial generous financial support enabling us to develop our proposals to date."
4. Channel 4 responded on 5 September 2023. It stated that the information which the complainant had requested formed part of the information withheld in response to a previous request reference

FOI/2023/26 to which the complainant raised a complaint with the ICO for further investigation. The ICO had issued a decision notice reference IC-235966-W5N5 on 27 July 2023 and agreed that the information was exempt from disclosure under section 36 of FOIA. Channel 4 was therefore relying on section 36 of FOIA to withhold the information falling within the scope of the current request.

5. Channel 4 also stated that it did not consider that reasonable time had lapsed so as to no longer make the information live and maintained that even if the information was no longer live, then section 43(2) of FOIA is the exemption it would rely on to withhold the information.
6. Following an internal review on 14 November 2023, Channel 4 maintained its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 26 November 2023 to complain about the way their request for information had been handled. They argued that their request should not be counted as having been dealt with under the previous request reference FOI/2023/26 and asserted that it should be treated as a new request.
8. During the Commissioner's investigation, he sought to clarify whether by relying on section 36, Channel 4 was also confirming that the Qualified Person's view, provided on the previous case reference IC-235966-W5N5 remained unchanged.
9. Channel 4 responded to the Commissioner explaining that while the Qualified Person's view remained unchanged, it is mindful of the passage of time between the provision of the opinion and the Commissioner's current letter. It recognised that the passage of time may lessen the extent to which the information would be considered live and if Channel 4 were to consider the request now it would decide that disclosure would be likely to prejudice the effective conduct of public affairs. During a telephone conversation with the Commissioner Channel 4 confirmed that in light of the passage of time it had decided that section 43(2) of FOIA is the appropriate exemption.
10. The Commissioner considers that the scope of his investigation is to determine whether Channel 4 was correct to withhold the information on the basis of section 43(2) of FOIA.

Reasons for decision

Section 43- commercial interest

11. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
12. The Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 as follows:

"A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."¹
13. Where a public authority considers that the information it holds comprises commercial information, the Commissioner's view is that, in order to engage section 43, the public authority must be able to show how, and why, its disclosure has the potential to prejudice someone's commercial interests.
14. Channel 4 argued that the information would be likely to prejudice its own commercial interests as well as those of other organisations that contributed to the CIISA.
15. It explained that as with the CIISA, Channel 4 is also involved with and contributes funding to a number of cross-industry bodies. It says that if financial contribution to such cross-industry bodies were to become subject to routine disclosure, it would likely put it at a disadvantage, as it is unlikely that any future cross-industry body would accept a lesser contribution as they would be able to gauge the level of investment Channel 4 is prepared to make in such ventures.
16. Channel 4 explained that it operates in a highly competitive environment against privately owned rivals. While it contributes funding to a number of cross-industry bodies, it argued that in cases where Channel 4 is the only publicly owned broadcaster shareholder involved, if it were to routinely disclose the levels of investment in these cross-industry bodies, this could lead to concern by privately-owned rivals that details of their own levels of investment could be inferred from information disclosed by Channel 4. Channel 4 argues that this could lead to

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

privately owned rivals blocking its involvement in such cross-industry initiatives in future which could impact its ability to compete.

17. It stated that whilst it has relied on section 43(2) in relation to prejudice to its own commercial interests, it has considered the competitive nature of the broadcasting sector. By way of demonstrating this point, Channel 4 referred to the disclosure by Netflix of its viewing figures for its content in December 2023. It says that there are regular articles in the press, for instance, when sports TV rights come up for renewal or other popular programmes, which, Channel 4 says, illustrates the sensitivity attached to any broadcaster spend. It argues that if Channel 4 were to disclose information about its own investments, this could be used to infer the levels of investment by privately owned broadcasters as they may consider this to be prejudicial to their interests.
18. Channel 4 says that while it is in competition with other broadcasters, it also relies on good and cooperative relationship for joint ventures. It states that although it has joined public service broadcasters, for instance, in the development of streaming services, it argues that it is unlikely that Channel 4 would be invited to collaborate on such initiatives with privately owned broadcasters in future if it were to publish information that could be used to infer their level of investment.

Public interest test

19. Section 43 is a qualified exemption. This means that if the requested information is exempt from disclosure (either because the information is a trade secret or because of prejudice to commercial interests), you must consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.
20. In relation to the public interest in favour of disclosure, Channel 4 considered the general public interest in transparency relating to the inner working and decision-making of publicly owned organisations.
21. It argued that there is little insight to be gained from details of the exact amount contributed other than to be indicative of a privately owned body's total set up costs. It maintained that the public interest in scrutinizing its decision-making was largely met by way of confirmation that a decision had been made to invest funds into CIISA. It says that the level of investment it made in CIISA does not add additional insight to the decision it took to be involved with and financially contribute to CIISA.
22. Channel 4 argued that it spent no public funds on CIISA as its money is derived from commercial activities rather than taxpayer derived revenue. It argues that this significantly diminishes the public interest in the level of investment made.

23. Channel 4 considered the public interest in protecting its commercial interests by ensuring it would continue to be invited to join cross-industry initiatives, thereby protecting revenue streams, and ensuring that it can continue to operate free from public subsidy.
24. Channel 4 argued that if it were to be perceived that its involvement in cross industry initiatives could facilitate disclosure of information about its financial arrangements, this would likely have significant impact on decisions to involve Channel 4 in such initiatives in future.

The complainant's argument

25. The complainant has argued that they do not see how section 43(2) could apply to their request for information as Channel 4 does not have a commercial relationship with CIISA. They have argued that CIISA is a new standards authority for creative industries and Channel 4 is presumably funding it for altruistic purposes. Therefore, if this were a commercial relationship, they argue that it would raise other ethical questions regarding Channel 4's standing with CIISA.
26. The complainant added that they made the same request to the BBC, and a response was provided without the need for an internal review. They argued that whilst they recognise that BBC is a different organisation, this is still important when considering whether Channel 4 is being proportionate, and fair given the public interest involved.
27. The complainant also argued that Channel 4's contention that it is funded differently in comparison to the BBC is irrelevant as it is subject to the FOIA just as the BBC is.
28. The complainant further argued that there is a public interest in seeing how CIISA will operate and whether its funding set up could influence its decisions, if the accused worked for a body known to have funded it.
29. During the Commissioner's investigation, the complainant provided further evidence in support of his position in the form of publicly available end of year financial statement for Time's Up UK which shows how much the organisation invested in support of CIISA.

Balance of the PIT

30. In making his decision, the Commissioner has taken into account, the withheld information as well as the arguments presented by the parties. Whilst there is always a public interest in public authorities being open and transparent in this case the Commissioner is not persuaded that a disclosure of the withheld information would be in the public interest. He is not satisfied that it would significantly clarify or determine how CIISA would make its decisions if an accused individual worked for an organisation that supported it. The Commissioner finds that there is

further public interest in public authorities being able to maintain their commercial position without risk of harm caused by a disclosure of the withheld information. While the complainant has argued that other organisations have disclosed the same information, the Commissioner is not in a position to comment or deliberate on those disclosures.

31. The Commissioner recognises that there is a commercial interest that will need to be protected from prejudice. This is Channel 4's own commercial interest to participate competitively within its own industry. While the Commissioner agrees that the funds contributed by Channel 4 to CIISA was not for commercial purposes, it does not take away the fact that there is a potential for Channel 4's competitive position to be affected by the disclosure of the withheld information.
32. Therefore, the Commissioner is satisfied that the balance of the public interest in this case rests in the exemption in section 43(2) being maintained.
33. The Commissioner's decision is that Channel 4 was correct to withhold the information under section 43(2) of FOIA.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Esi Mensah
Senior Case Officer
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Wycliffe House
Water Lane
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