

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2024

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. In two requests, the complainant has requested information about costs associated with ‘Strictly Come Dancing.’ The BBC explained that, in both cases, the information is derogated and excluded from FOIA.
2. The Commissioner’s decision is that in both cases, if held, the BBC holds the information for the purposes of ‘journalism, art or literature.’ The information is therefore not covered by FOIA, and the BBC does not need to take any corrective steps.

Requests and response

Case reference IC-295829-D2M9

3. The complainant wrote to the BBC on 8 December 2023 and requested information in the following terms:

“In accordance with the FOI Act can you please provide me with a breakdown of the individual names & the contract values paid to all parties including BBC staff, presenters, of the 2023 Strictly Come Dancing Programme which should also include the individuals below etc.

- Amanda Abbington and Giovanni Pernice
- Zara McDermott and Graziano Di Prima

- Jody Cundy CBE and Jowita Przystal
 - Krishnan Guru-Murthy and Lauren Oakley
 - Angela Rippon CBE and Kai Widdrington
 - Layton Williams and Nikita Kuzmin
 - Nigel Harman and Katya Jones
 - Bobby Brazier and Dianne Buswell
 - Eddie Kadi and Karen Hauer
 - Annabel Croft and Johannes Radebe
 - Ellie Leach and Vito Coppola
 - Adam Thomas and Luba Mushtuk
 - Angela Scanlon and Carlos Gu
 - Nikita Kanda and Gorka Marquez
 - Les Dennis and Nancy Xu
4. On 10 January 2024, the BBC responded. It explained that it believes that the information requested is excluded from FOIA because, if held, it would be held for the purposes of 'journalism, art or literature.' The BBC explained that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by FOIA if it's held for 'purposes other than those of journalism, art or literature'. It concluded that the BBC wasn't required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities. It therefore wouldn't provide any information in response to the request for information.

Case reference IC-287763-Z0D0

5. The complainant wrote to the BBC on 11 January 2024 and requested information in the following terms:
- "In accordance with the FOI Act can you please provide the total salary & contract costs to the TV licence payer for the 2023/24 Strictly Come Dancing series?"

6. The BBC responded on 7 February 2024. It again explained that it believed that, if held, the information requested is excluded from FOIA because it would be held for the purposes of 'journalism, art or literature.'

Reasons for decision

7. The complainant disputes that the information they've requested in their two requests isn't covered by FOIA. They've also queried whether it's the case that the BBC didn't have to provide an internal review.
8. This reasoning therefore covers whether the information the complainant has requested is derogated information, and so not within scope of FOIA. The Commissioner will consider the matter internal reviews under 'Other Matters.'
9. Schedule 1, Part VI of FOIA provides that the BBC is a public authority for the purposes of FOIA but 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 means that the BBC isn't obliged to comply with part I to V of the Act where it holds information for 'purposes of journalism, art or literature.' The Commissioner calls this situation 'the derogation.'
11. The House of Lords in **Sugar v BBC [2009] UKHL 9** confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the requested information is caught by the derogation.
12. The scope of the derogation was considered by the Court of Appeal in the case **Sugar v British Broadcasting Corporation and another [2010] EWCA Civ 715**, and later, on appeal, by the Supreme Court (**Sugar (Deceased) v British Broadcasting Corporation [2012] UKSC 4**). The leading judgment in the Court of Appeal case was made by Lord Neuberger of Abbotsbury MR who stated that:

" once it is established that the information sought is held by the BBC for the purposes of journalism, it is effectively exempt from production under FOIA, even if the information is also held by the BBC for other purposes." (paragraph 44), and that "...provided there is a genuine journalistic purpose for which the information is held, it should not be subject to FOIA." (paragraph 46)

13. The Supreme Court endorsed this approach in **Sugar (Deceased) v British Broadcasting Corporation and another [2012] UKSC 4**¹ and concluded that if the information is held for the purpose of journalism, art or literature, it is caught by the derogation even if that is not the predominant purpose for holding the information in question.
14. In order to establish whether the information is held for a derogated purpose, the Supreme Court indicated that there should be a sufficiently direct link between at least one of the purposes for which the BBC holds the information (ignoring any negligible purposes) and the fulfilment of one of the derogated purposes. This is the test that the Commissioner will apply.
15. If a sufficiently direct link is established between the purposes for which the BBC holds the information and any of the three derogated purposes – ie journalism, art or literature - it is not subject to FOIA.
16. The Supreme Court said that the Information Tribunal's definition of journalism (in **Sugar v Information Commissioner (EA/2005/0032, 29 August 2006)**) as comprising three elements, continues to be authoritative,

“1. The first is the collecting or gathering, writing and verifying of materials for publication.

2. The second is editorial. This involves the exercise of judgement on issues such as:

- * the selection, prioritisation and timing of matters for broadcast or publication,
- * the analysis of, and review of individual programmes,
- * the provision of context and background to such programmes.

3. The third element is the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and development of individual journalists, the mentoring of less experienced journalists by more experienced colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making.”

However, the Supreme Court said this definition should be extended to include the act of broadcasting or publishing the relevant material. This

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

extended definition should be adopted when applying the 'direct link test.'

17. 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.
18. The information that has been requested in this case concerns costs associated with the BBC's television programme, 'Strictly Come Dancing.' The Commissioner is satisfied that there's a relationship between the requested information in both cases and the BBC's broadcast output. The requested information is associated with the BBC's creation of that television programme and decisions about how it allocates its resources.
19. The Commissioner's decision is therefore that, in both cases, the BBC holds the requested information for the purposes of journalism, art or literature and was not obliged to comply with Parts I to V of FOIA. Since the information is derogated, the Commissioner has no jurisdiction in this matter and therefore no statutory power to order disclosure.
20. This is in line with the Commissioner's decision in FS50605213², which was also about 'Strictly Come Dancing.'³

² https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1560551/fs_50605213.pdf

Other matters

21. In IC-287763-Z0D0 the complainant had asked the BBC to review its response and the BBC had advised that it doesn't offer an internal review when the information requested isn't covered by FOIA.
22. Provision of an internal review isn't a requirement under FOIA. But where a request is caught by FOIA the Commissioner would expect a public authority to provide an internal review as a matter of good practice.
23. In this case the requested information isn't caught by FOIA. As such, the BBC wasn't under obligation to provide a review and the Commissioner wouldn't have expected it to.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Cressida Woodall
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Wycliffe House
Water Lane
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SK9 5AF