



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
[INFORMATION RIGHTS]**

**Case No. EA/2009/0015**

**ON APPEAL FROM:  
Information Commissioner's Decision Notice No: FS50090393  
Dated: 9 February 2009**

**Appellant: BRITISH BROADCASTING CORPORATION**

**Respondent: INFORMATION COMMISSIONER**

**Determined on the papers**

**Date of decision: 8 February 2010**

**Before**

**Andrew Bartlett QC (Judge)  
David Sivers  
and  
John Randall**

**Attendances:**

n/a

**Subject matter:** Freedom of Information Act 2000 – Authorities to which Act has limited application – whether information held for purposes other than those of journalism, art or literature – FOIA s 7(1) – FOIA Sch 1 Pt VI

**Cases:** *British Broadcasting Corporation v Information Commissioner* [2009] EWHC 2348; *British Broadcasting Corporation v Sugar* [2009] EWHC 2349.

**DECISION OF THE FIRST-TIER TRIBUNAL**

The appeal is allowed and the Decision Notice dated 9 February 2009 is substituted by the following notice:

For the reasons set out in the Tribunal's decision, in regard to the request of 6 May 2005 concerning the cost of BBC Radio's activities, the following information was held at the relevant time for the purposes of journalism, art or literature within the meaning of the BBC's entry in Part VI of Schedule 1 to FOIA:

The requested information at-

- part (i) insofar as it consisted of station by station spending broken down by topic (e.g. talent costs, production, rights, royalties) rather than station by station spending per se,
- part (vi) (the budget for the Radio 1 Breakfast show),
- and
- part (vii) (the budget for the Radio 1 chart show).

The BBC was therefore entitled to decline to disclose the information on the basis that FOIA did not apply to it.

**Action required**

The BBC is not required to take any action.

## REASONS FOR DECISION

1. The Tribunal has been requested by the parties to allow this appeal by consent. Under the procedural rules applicable at the time when the appeal was commenced, the Tribunal had no power to allow an appeal without an oral hearing or a determination on the papers. We have therefore thought it appropriate to determine this appeal by consideration of the papers.
2. The original requester of information asked the BBC on 6 May 2005 for information relating to spending on radio stations and radio budgets. The BBC refused to provide it, on the ground that it was information held for the purpose of journalism, art or literature, and accordingly that it fell within the subject area in respect of which the BBC is not required to make disclosures under the Freedom of Information Act ("FOIA"), because of FOIA s7(1) and Sch 1 Pt VI. The Information Commissioner decided on 9 February 2009 that some of the information was properly withheld and that some ought to be disclosed. He ordered the disclosure of the Radio 1 breakfast show budget.
3. On 10 March 2009 the BBC appealed to the Tribunal. At the BBC's request with the consent of the Commissioner the appeal was stayed pending the decision of the High Court in other cases in which the BBC's position under FOIA was under consideration.
4. In two cases, *British Broadcasting Corporation v Information Commissioner* [2009] EWHC 2348 and *British Broadcasting Corporation v Sugar* [2009] EWHC 2349, the High Court decided that the BBC was not required to disclose information if it was held to any significant extent for the purpose of journalism, art or literature, even if it was held predominantly for some other purpose.

5. In the light of the decisions made by the High Court the parties were in agreement that the present appeal must be allowed. The original requester was given the opportunity to make representations to us, but did not take it up.
  
6. We agree with the parties that the appeal must be allowed. It is not necessary for us to consider the factual arguments on the predominant purpose for which the information was held at the time the request was dealt with, and we express no view on them. We allow the appeal on the basis of the view of the law identified in paragraph 4 above, by which we are bound.
  
7. We are conscious of the possibility that the views expressed by the High Court may be overturned or indirectly affected at some future time by the decision of a higher court. That is not a reason for delaying the decision of the present appeal. In the event that a higher court takes a different view which might be thought to lead to a different result in the circumstances of the present case, our decision must not be interpreted as preventing the same or another requester putting in a fresh request under FOIA and having the matter determined in the light of the facts and law as they then appear.

**Andrew Bartlett QC**  
Judge  
8 February 2010