



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0040

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50713696

Dated: 30 January 2018

Date of Hearing: 02 July 2018 at Birmingham Civil Justice Centre

Before

JUDGE ROBERT GOOD

Between

MR ALAN STEDALL

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Subject Matter:

Freedom of Information Act 2000 (FOIA) - Section 1(1)(b) (Information not held)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Factual background

1. The appellant, Mr Alan Stedall requested information from the BBC concerning details of the agreement between the BBC and the European Union (EU) concerning funding. The BBC responded that there was no such agreement but that the BBC did receive funding under the non-programme related EU Framework Programme for Research and Development and that some programmes receive EU grants either from the EU MEDIA programme or through UK Regional Bodies which, in turn, receive finance from the European Regional Development Fund.
2. Following an unsuccessful review Mr Stedall applied to the Information Commissioner. She investigated and decided on 30 January 2018 that the information requested was not held by the BBC.
3. In his appeal, Mr Stedall states (p10) that it is a matter of public record that the BBC received just over £20 million from the EU between 2007 and 2012 and that these sums would only be provided with a written agreement setting on the conditions of grant and for the BBC to deny the existence of these documents is implausible.
4. The BBC is not a party to this appeal. The Information Commissioner has indicated that no-one representing the Commissioner would be attending the hearing because in her view the issues are straightforward and could be dealt

with by written submissions. Mr Stedall requested a hearing and attended representing himself.

5. Mr David Elliott attended the hearing as an observer under the Judicial Shadowing Scheme but took no part in the proceedings.
6. The appeal papers consist of an open bundle, pages 1-46. Mr Stedall confirmed that he had received these papers and had no further documents he wished to submit to the Tribunal.

Request, decision notice and appeal

7. On 16 August 2016 Mr Stedall made a request under FOIA in the following terms:

“ Will you please accept this letter as my formal request under the above Act to be provided with full details of the agreement entered into by the BBC with the European Union under the terms of which the European Union has provided funding to the BBC”

8. In its reply of 20 September 2017, the BBC stated that it does not receive “EU money by routine. In line with its overall editorial independence, the BBC has in place strict rules to ensure that any external funding it receives does not diminish the BBC’s editorial control of BBC output nor compromise its editorial impartiality of integrity.”
9. The BBC went on to say “In certain, limited circumstances the BBC does, like many other organisations such as central Government departments and regional government, receive some funding from EU sources. Receipt of such funding has been regularly disclosed by the BBC in response to past FOIA requests. First, the BBC receives funds from related EU Framework Programme for Research and Development (R&D) Projects. This funding is

non-programme related. There is no overlap between R&D projects and editorial areas.”

10. “Second, some programmes broadcast on the BBC may receive EU Grants via the EU Media Programme, or location and production incentives through bodies such as UK regional bodies or indirectly through UK Regional Bodies, which are at least in part financed by the European Regional Development Fund.”
11. The BBC stated “Given the nature of the BBC’s relationships with independent producers and the BBC’s accounting practices, ascertaining the total quantity of such funding would take more than two and a half days; under section 12 of the Act, we are allowed to refuse to hand the request if it would exceed the appropriate limit.”
12. In his request for an internal review of this decision, Mr Stedall, said that the reply “does not satisfy my request to understand the terms of the agreement that the BBC entered into with the EU and whether such terms included any undertakings entered into by the BBC.”
13. The BBC identified the issues for review which were whether there is an agreement between the BBC and the EU for funding and whether the BBC has provided reasonable advice and assistance to Mr Stedall. The conclusion of that review was that the BBC does not hold the requested information and that the BBC had provided information about funding and links to the website which contains, amongst other things, access to the Annual Report and Accounts.
14. On 27 November 2017, Mr Stedall complained to the Commissioner, who then conducted an investigation and asked the BBC to investigate. The BBC stated

that the Policy Team was responsible for EU matters affecting the BBC. That team confirmed that there was no such agreement.

15. On 30 January 2018 the Information Commissioner decided that the BBC does not hold the information sought.
16. Mr Stedall appealed to the First-tier Tribunal on 4 March 2018. In the grounds for appeal, Mr Stedall says that over a 5 year period (2007 to 2012) the BBC received £20million of EU funds and that “it is implausible that these sums were dispensed by the EU without any form of accompanying document reflecting the agreements reached as to the intended purpose of these funds and any accompanying conditions that the BBC entered with the EU on receiving the said funds”.
17. The Commissioner’s response to the appeal is that the request clearly relates to the existence of a single agreement, the premise being that there is a single overarching funding agreement in existence and that the BBC has clearly stated that there is no such agreement. The response concludes by suggesting that Mr Stedall is not prevented from making a new request, in different terms, now he is aware of how the EU provides funds.
18. Mr Stedall also provided a written response. This appears at pages 22 and 23. In the Tribunal, Mr Stedall said that this written response was the basis of the argument he wished the Tribunal to consider. He said that it is implausible for there to be funding without a written agreement, that there may be more than one agreement but his request should cover all of the relevant agreements and that it was in the public interest to know what contractual arrangements the BBC entered into in return for this funding. He argues that this is of particular importance because of the trust the public has that news reporting is without political bias.

Conclusions

19. Mr Stedall has sought information under FOIA. The response has been that this information does not exist. The Commissioner accepts that this is the case. Mr Stedall remains unconvinced.
20. There is a clear statement from the BBC that there is no overarching agreement between the BBC and the EU and that the charter forbids any outside funding for news reporting. The Tribunal accepts these statements. Mr Stedall has not provided evidence to challenge these statements. The BBC publishes a significant amount of information about its policies and funding. This information does not support Mr Stedall's views.
21. Mr Stedall's belief is that the BBC is demonstrating a pro-EU bias in its news reporting and he believes that one of the reasons for this may be that, in return of funding, the BBC has agreed not to criticise the EU. He is seeking information to confirm this belief. He accepts that the current information available and published does not support his beliefs. However, on the principle that there is 'no such thing as a free lunch' he is suspicious about the funding the BBC receives and what may have been promised in return.
22. The BBC reports the receipt of funding from the EU. However, this has to be understood in the context that the EU provides funding for specific projects to promote EU goals. In its reply, the BBC sets out the range of funding available and that this funding is disclosed and that the BBC has rules to ensure that any external funding it receives does not diminish its editorial control or interfere with its editorial impartiality. The Information Commissioner has suggested to Mr Stedall that he could make a specific FOIA request for details of particular funding projects. However, Mr Stedall wishes to explore whether there is some background or overarching agreement within which these grants are applied for and made. He seeks to have disclosed an

agreement which he thinks will support his view that the BBC is refraining from criticising the EU in return for money. There is no such agreement.

23. In the Tribunal's view it is inconceivable that the BBC would enter into an agreement or agreements with the EU to receive money in return for refraining from criticism. This would be a direct breach of the charter and Mr Stedall has not provided evidence to suggest that this has happened. The award of EU grants for specific activities is well established and is used by government, local government, statutory and voluntary organisations. This type of funding does not and could not set requirements over content or opinion.
24. The Tribunal accepts the Information Commissioner's opinion that the information sought does not exist. The Tribunal upholds the Commissioner's decision and dismisses the appeal.

Signed

R Good

Judge of the First-tier Tribunal

Date: 24/07/2018