



Appeal number: EA/2023/0210
Decision given on: 10 July 2024

Neutral Citation Number: [2024] UKFTT 00603 (GRC)

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

ED RYLAND

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

- and -

CHANNEL FOUR TELEVISION CORPORATION

Before:

**HHJ MOIRA MACMILLAN
MS KATE GRIMLEY-EVANS
MS NAOMI MATTHEWS**

Sitting remotely on 11 March 2024

Appearances:

Mr Ed Ryland represented himself.

The Information Commissioner was not represented.

Channel Four Television Corporation was represented by Aiden Eardley KC and Luke Browne

DECISION

1. The appeal is refused.

2. Decision Notice dated 3 April 2023 is upheld.

REASONS

Mode of hearing

3. The hearing was convened remotely by CVP on 11 March 2024. All persons joined the hearing remotely. The Tribunal was satisfied that this constituted an open hearing in public within the meaning of rule 35A (3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

4. Since that date, promulgation of the Tribunal's Decision has been delayed for which I must apologise. This has been due initially to ill health and subsequently to other work commitments.

5. The Panel considered agreed electronic bundles consisting of:

- (a) An open bundle of evidence comprising pages 1 to 777,
- (b) A supplementary bundle comprising pages 1 to 248,
- (c) An authorities bundle comprising pages 1 to 112,
- (d) A supplementary authorities bundle comprising pages 1 to 170, and
- (e) Written submission, supplemented orally at the hearing.

Background to Appeal

The request

6. On 24 November 2022 Mr Ryland made a request under s. 1 of the Freedom of Information Act 2000 ('FOIA') addressed to Channel Four Television Corporation ('Channel 4') in the following terms:

"As you may also be aware, Qatar are the largest stakeholder in Sainsbury's, who sponsor your flagship programme - The Great British Bake Off - and with whom you also appear to have various commercial [sic] deals.

Please could you provide me with information regarding how much any such deals, and other advertising [sic] sales to Sainsbury's, have been worth in each year since and including 2019. Could you please also provide information regarding how much this represents as a total of your revenue in those years, and where Sainsbury's ranks in terms of companies funding Channel 4 in this way, and how much revenue from Sainsbury's represents as a percentage of your total."

7. On 8 December 2022 Mr Ryland supplemented his request as follows:

“Just for clarity - this request includes details of C4 deals with Nectar or other well-known Sainsbury's brands or subsidiary's [sic]. Like most people I already assumed any deals with Nectar (who are wholly owned by Sainsbury's) would already be included, but a more cynical approach might try to claim otherwise.”

8. Channel 4 responded to the request on 22 December 2022, stating that it did not believe the requested information was subject to FOIA because it was held for the purposes of art, journalism or literature.

The Decision Notice

9. On 22 December 2022 Mr Ryland complained to the Information Commissioner ('the ICO') about Channel 4's response.

10. In a Decision Notice ('DN') dated 3 April 2023 the ICO concluded that:

- i. Pursuant to Schedule One, Part VI FOIA, Channel 4 is a public authority for the purposes of that Act in respect of information held for purposes other than those of journalism, art or literature;
- ii. Both the Court of Appeal in *Sugar v British Broadcasting Corporation and another (No. 2)* [2010] EWCA Civ 715, and the Supreme Court in *Sugar (Deceased) and another v British Broadcasting Corporation (No. 2)* [2012] UKSC 4 confirmed that, once it has been established that requested information is held for the purposes of journalism, art or literature, it is effectively exempt from FOIA ('the derogation'). The derogation applies even if the information is also held for one or more other purpose in relation to which the derogated purpose is not predominant, provided the derogated purpose for which it is held is genuine and not negligible;
- iii. To establish whether information is held for a derogated purpose, there must be a sufficiently direct link between at least one of the purposes for which the information is held and the fulfilment of one of the derogated purposes;
- iv. The House of Lords in *Sugar v BBC* [2009] UKHL 9 confirmed the ICO has jurisdiction to issue a decision notice to confirm whether or not requested information is subject to the derogation; and
- v. That the applicable definition of journalism in this context is that identified in *Sugar v Information Commissioner (EA/2005/0032)* which refers to 'functional journalism' activities that consist of 3 elements. In broad terms, this means that derogated information includes information held for a purpose with a sufficiently direct link to a broadcaster's output to the public, and/or to the production, editorial management or maintenance of standards of journalism, art and literature.

11. The ICO then analysed the nature of the information Mr Ryland had requested from Channel 4 and concluded that:

- i. All of Channel 4's revenue is generated through commercial activities, which include advertising and sponsorship, and which help pay for the programmes the channel broadcasts;

- ii. Editorial decisions about the broadcasting of adverts are directly linked to the output of Channel 4. For example, in relation to 'The Great British Bake Off' ('GBBO') Channel 4 makes editorial decisions to enhance the funds it can receive from advertising when broadcasting the programme, including through its sponsorship agreement with Sainsbury's; and
- iii. As a consequence, the value of advertising and sponsorship arrangements are a key consideration for Channel 4 when deciding how much it can afford to pay for the rights to broadcast a programme.

12. The ICO therefore decided that:

'the information requested, relating to the Channel 4's decisions in relation to sponsorships deals, is information held for the purpose of 'journalism, art or literature'. This is because this information relates to the exercise of judgement on issues such as the selection, prioritisation and timing of matters for broadcast and is directly linked to Channel 4's output.'

Notice of Appeal

13. On 15 April 2023 Mr Ryland appealed to the Tribunal against the DN. His Grounds of Appeal highlight the fact that the government of Qatar owns a 15% share in Sainsbury's, and raise arguments as to why it may be in the public interest to establish how much funding Channel 4 has received from this source.

14. The Grounds of Appeal, as initially raised, are:

- i. that both Channel 4's response to Mr Ryland's information request and the DN focus primarily on the sponsorship arrangement between Channel 4 and Sainsbury's in relation to GBBO, whereas the request was for information about all of Channel 4's revenue from Sainsbury's and its subsidiary companies;
- ii. While Mr Ryland accepts that information about sponsorship revenue from a specific programme such as GBBO could be said to have a sufficiently direct link to an editorial decision relating to its broadcast, information about the total amount of funding received by Channel 4 from Sainsbury's has no direct link with any broadcast output, nor with any particular programme or group of programmes. Mr Ryland disputes whether a total revenue figure of this nature could be used to make editorial decisions. He submits that any direct or indirect link that might exist between individual strands of information and a derogated purpose is removed once the information is aggregated.
- iii. Mr Ryland relies in particular on Lord Walker's observation at paragraph 55 of the Supreme Court's decision in Sugar (No. 2):

"In my view, whatever meaning is given to 'journalism' I would not be sympathetic to the notion that information about, for instance, advertising revenue, property ownership or outgoings, financial debt, and the like would normally be 'held for purposes . . . of journalism'. No doubt there can be said to be a link between such information and journalism: the more that is spent on wages, rent or interest payments, the less there is for programmes. However, on that basis, literally every piece of information held by the BBC could be said to be

held for the purposes of journalism. In my view, save on particular facts, such information, although it may well affect journalism-related issues and decisions, would not normally be 'held for purposes . . . of journalism'. The question whether information is held for the purposes of journalism should thus be considered in a relatively narrow rather than a relatively wide way."

15. Mr Ryland has subsequently raised an additional Ground of Appeal, namely that in respect of his request, Channel 4 has failed to comply with its obligation under s.16 FOIA to provide a requester with reasonable advice and assistance. He submits that it has become clear over time that his request was open to more than one interpretation, and that Channel 4 should have clarified the nature and breadth of the information he had requested. Mr Ryland's position is that Channel 4 interpreted his request as relating solely to information about advertising revenue from GBBO, that this was the limited basis upon which Channel 4 responded and that this error in interpretation was further adopted by the ICO and is reflected in the DN.

s.43(2) FOIA

16. In its response to Mr Ryland's appeal, Channel 4 submits primarily that the requested information is subject to the derogation and therefore exempt from FOIA. However, in the course of these proceedings it has sought to rely in the alternative on s.43(2) FOIA. In summary, Channel 4's alternative position is that, should the Tribunal decide that the requested information is not held for a derogated purpose, the Panel could go on to consider, based upon the material already before it, whether publication of the requested information would, or would be likely to, prejudice the commercial interests of (a) Channel 4, (b) Sainsbury's, and/or (c) Omnicom (the advertising agency with whom Channel 4 negotiates its overall advertising relationship with Sainsbury's), and whether the public interest in maintaining the s.43(2) exemption outweighs the public interest in making the information public.

17. Although the ICO has responded to Mr Ryland's Grounds of Appeal, it has not considered the application of s.43(2) to the requested information because this issue was not raised by Channel 4 during the ICO's investigation of Mr Ryland's complaint and has therefore not been investigated by the ICO.

18. At the start of the appeal hearing, the Panel also declined to consider Channel 4's submissions in relation to the application of s.43(2) to the requested information. This was because:

- i. S.43(2) is not an issue raised in or considered by the DN under appeal. S.57 provides a right of appeal to the Tribunal against a decision notice. The Tribunal's powers are set out in s.58:

58.— Determination of appeals.

(1) *If on an appeal under section 57 the Tribunal considers—*

(a) *that the notice against which the appeal is brought is not in accordance with the law, or*

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

- ii. In this case the DN does not contain any exercise of discretion by the ICO or finding of fact in relation to either the application of s.43(2) or the balance of public interests. Because it was not considered or investigated by the ICO, the absence of any reference to s.43(2) in DN does not render the DN not in accordance with the law, and findings in relation to s.43(2) could not have been included in the DN served.
- iii. The application of a FOIA exemption is a materially different issue to that of whether information is subject to the derogation (and therefore not subject to FOIA at all). It was not an issue before the ICO when he made his decision about Channel 4's response to Mr Ryland's request. Given the responsibilities delegated to the ICO by Parliament, the Tribunal would wish to have the ICO's assistance and input when determining the application of the s.43(2) exemption in the novel context in which Channel 4 operates.
- iv. Channel 4 has not produced the requested information for the Tribunal to consider. This may well be because the aggregate information Mr Ryland has requested does not currently exist. However, as a consequence, there is no actual information for the Panel to consider or to ask Channel 4 questions about, in a closed hearing if necessary. There is also little material before the Tribunal relating to what, if any, similar information may already be in the public domain, or to fully explain the context in which application of s.43(2) and the public interest ought to be considered. In short, Channel 4 were asking the Tribunal to make a decision in principle about whether unseen information should be made public. This is contrary to the normal practice of the Tribunal, from which the Panel found no compelling reason to depart.
- v. The Upper Tribunal's decision in *Information Commissioner v Malnick* [2018] UKUT 72 (AAC), paragraph 90, confirmed that the Tribunal exercises a full merits appellate jurisdiction and stands in the shoes of the ICO to decide which, if any, exemptions apply. However, if the ICO, or the Tribunal standing in the ICO's shoes, decides that a public authority has failed to communicate information under s.1(1) FOIA when it was required to do so, s.50(4) requires a decision notice to be served on the public authority specifying the steps the public authority must take to rectify the failure¹. Moreover, there is no limit on the number of complaints that can be made to the ICO in relation to the same

¹ *Montague v Information Commissioner and the Department for International Trade* [2022] UKUT 104 (AAC) para 62

information request, provided each relates to an issue not previously considered².

In this case, Channel 4 has not issued a response to Mr Ryland's request pursuant to s.1(1). The Panel's view is that, had it allowed Mr Ryland's appeal, the most appropriate way forward would have been to issue a substituted DN, setting out why the Tribunal had concluded that the requested information was not subject to the derogation, and requiring Channel 4 to respond to Mr Ryland's request afresh in accordance with s.1(1). This substituted DN is one that could have been issued by the ICO in the context of the investigation he had carried out.

Remaining issues before the Tribunal

19. Other than the application of s.43(2) and the public interest test, by the date of the hearing the issues identified by the parties for determination by the Tribunal were:

- i. Whether the ICO had misinterpreted Mr Ryland's request as relating solely to advertising revenue received in connection with GBBO and had served a DN relating to the application of the derogation in that limited context;
- ii. Whether the ICO was in error when considering the application of the derogation to individual strands of information about advertising revenue (referred to hereafter as 'building blocks') rather than to information about the aggregate sum of Sainsbury's advertising spending with Channel 4 each year;
- iii. Whether Sainsbury's advertising output on Channel 4 was caught by the FOIA definition of journalism, art or literature;
- iv. Whether the ICO was correct to conclude that the derogation applied to the requested information; and
- v. Whether Channel 4 had breached its duty under s.16 FOIA to provide advice and assistance to Mr Ryland, in the context of whether it should have sought further clarification of his request.

Issues ii, iii & iv - application of the derogation

20. The parties agree that the primary task of the Tribunal is to assess whether the requested information is held for a derogated purpose, and is therefore not subject to the requirements of FOIA.

21. In addition to detailed written and oral submissions, the Panel were assisted by witness evidence from Verica Djurdjevic, the Chief Revenue Officer for Channel 4. She confirmed that Channel 4 is a public service broadcaster ('PSB'), and therefore a not-for-profit corporation with a bespoke and mandated remit in terms of its creative output, as set out in the 1990 and 1996 Broadcasting Acts, as amended.

22. Ms Djurdjevic explained that 90% of the funding for Channel 4 comes from advertising, and that the channel seeks to optimise returns from commercial activities. All revenue received by Channel 4 is reinvested, with the majority spent on acquiring and commissioning programme content for broadcast. Ms Djurdjevic stated that all revenue received by

² Dr Michael Smith v The Information Commissioner: [2022] UKUT 261 (AAC)

Channel 4 goes towards funding future broadcast output, which funding includes commissioning new content and purchasing (and sometimes bidding for) other types of content.

23. Ms Djurdjevic identified five types of commercial arrangements that Channel 4 enters into with advertisers:

- i. Traditional advertising – spot advertising of products or services during breaks within and between broadcast programmes. She explained that the number and length of advertising breaks are strictly regulated. Her evidence is that Channel 4 staff consider the juxtaposition between spot advertising and programmes, employing a team for this purpose, and that the teams schedules spot advertising to match programme content, thereby (in Channel 4's view) making the placement of spot adverts a creative activity.
- ii. Creative partnerships – an arrangement whereby spot advertising is placed into a specially curated advertisement break on a thematic basis, or where specific advertising is tailored to a specific programme being broadcast.
- iii. Sponsorship – where an advertiser is identified at the beginning, during and/or at the end of a programme, in circumstances where the sponsorship credit is clearly linked to the content of the programme.
- iv. Produce placement – where an advertiser's brand and product is included in a programme, subject to a test of editorial justifiability.
- v. Advertiser-funded programming – which may be partial or full.

24. Ms Djurdjevic confirmed that, during the period relevant to Mr Ryland's request, the majority of Channel 4's revenue from Sainsbury's was from traditional advertising, although revenue was also received from two creative partnerships, one sponsorship deal and one advertiser-funded programme. She explained that Channel 4's commercial relationship with Sainsbury's is managed and negotiated through Omnicom.

25. Ms Djurdjevic stated that Channel 4 held as building block information the spend allocated to each advertiser for the relevant period across each type of commercial arrangement, but that the channel had never had cause to aggregate any of the building blocks with a view to producing a combined figure, either in order to identify the total commercial revenue received from one advertiser, or to establish the percentage of total revenue this figure might represent. However, Ms Djurdjevic accepted that Channel 4 could, if required, generate the requested aggregate information.

26. In terms of the relationship between advertising and Channel 4's creative output, Ms Djurdjevic stated that the channel has the same regulatory responsibilities in relation to all content it broadcasts, including its advertising output. She explained that Channel 4 employs a team whose role is to consider and research the social and other impacts of advertising, and to make advertising scheduling decisions, matching advertising content to programmes. She explained that Channel 4 always acts to maximise revenue because this has a direct impact upon the channel's ability to acquire or commission programmes for broadcast. A decline in advertising revenue would lead to a reduction in the number of expensive programmes Channel 4 would be able to commission, which would in turn have an impact upon its ability to meet its public service broadcasting obligations.

27. Ms Djurdjevic also spoke about the commercial sensitivity of the requested information. In essence, she stated that publication of the aggregate information would enable other organisations with an interest in TV advertising to calculate the advertising rates negotiated between Channel 4 and advertisers, and would therefore put Channel 4 at a significant commercial disadvantage in the future when bidding on popular content. The Panel concluded that this aspect of Ms Djurdjevic's evidence went mainly to the application of the s.43(2) exemption, should the Tribunal conclude that the requested information was not subject to the derogation, rather than to the issue of whether the derogation applies. However, the Panel accepted Channel 4's submission that the issue of whether a public service broadcaster might be put at a commercial disadvantage may be relevant to a purposive interpretation of the derogation, considered in the paragraphs below.

Submissions

28. The Panel was assisted by detailed written and oral submissions by Mr Ryland, both before and after the hearing.

29. **Mr Ryland** accepts that, given some of the commercial arrangements Channel 4 enters into with advertisers, some building block information will have a more direct link with a derogated purpose. However, he submits that since his request is for aggregated information, which is information that does not currently exist and is different in nature from any individual building block, it cannot be said that the requested information is held for any purpose at all, let alone a derogated purpose.

30. Mr Ryland contends that the approach the Tribunal should take when determining the relationship between building block information and aggregate information should be the same taken by FOIA in relation to personal data. This approach prohibits the publication of information that is personal data from which an individual could be identified but permits publication of information where personal data is sufficiently anonymised, often through aggregation, to prevent this from happening.

31. In the alternative, Mr Ryland submits that should the Tribunal conclude that aggregate information about Channel 4's commercial revenue from Sainsbury's is not new information wholly different from the building blocks, then there is minimal, if any, link between the information once aggregated and a derogated purpose. He structures his submission around the tripartite definition of functional journalism, approved by the Supreme Court in Sugar (No 2). In essence, Mr Ryland contends that the majority of Channel 4's revenue from Sainsbury's is received from spot advertising, that the broadcast of spot advertising is not akin to the BBC's creative output and ought not to be treated in the same way, and that advertising is not generally broadcast for a journalistic, artistic or literary purpose.

32. **The ICO's** position is that the requested information is held for a purpose that has a direct link to Channel 4's journalistic, literary or artistic output. He submits that the derogation therefore applies for the reasons set out in the DN, firstly because the requested information has a direct link to Channel 4's editorial decisions about the selection, prioritisation and timing of matters to be broadcast. This is, he contends, because Channel 4 makes decisions about which programmes it can afford to broadcast based upon the levels of advertising revenue it can expect to receive when doing so. Secondly, the ICO submits that Channel 4 makes editorial decisions in relation to the selection of advertisements for

broadcast, including when making selective, editorial decisions about sponsorship arrangements.

33. The ICO submits that Mr Ryland's argument that the purpose for which aggregated information is held can be viewed as distinct from its constituent parts is misconceived. He contends that the approach taken by FOIA when assessing of information is to look at the content of the information rather than the form in which it is held. Therefore, he submits, if some or all of the building block information is held wholly or partially for a derogated purpose, then this does not change simply because the form in which the information is held is altered through aggregation.

34. The ICO contends that the ruling of the Supreme Court in *Sugar (No 2)* as respects the meaning of the derogation was intended to apply to all broadcasters listed in Schedule 1 of FOIA, which includes Channel 4, and that nothing in either FOIA or the Supreme Court judges suggests that a different approach should be taken to the application of the derogation to the output of the BBC versus Channel 4 due to the difference in funding models. Therefore, in the ICO's view, the derogation applies to all of Channel 4's output, including advertising output.

35. **Channel 4** adopts the ICO's submissions. It submits that information held about the channel's advertising revenue is either directly related to output within definition of 'journalism, art or literature' or that it has a sufficiently close connection with such output as to be still be within the derogation.

36. Channel 4's primary position is the former. It contends that one reason why information about advertising revenue can be properly described as being held for a purpose connected to 'journalism, art or literature' is because the channel makes editorial decisions about advertising output, and bears the same regulatory responsibility for it as it does broadcast programmes. In the alternative, Channel 4 submits that, due to its funding model, information held about advertising revenue will invariably have a close and direct link with the programmes it is able to commission and broadcast. Without the assurance of advertising revenue, Channel 4 submits that it would be unable to commission or buy many of the programmes it broadcasts. It contends that this connection arises in relation to all information held about advertising revenue, however generated, although the connection is particularly close in the context of revenue obtained from sponsorship agreements. Further, Channel 4 submits that advertising revenue generated from programmes with higher viewing figures is used to fund broadcast output that is less likely to attract advertising interest in its own right, such as the News. As a consequence, all information about advertising revenue is likely to have a direct link with Channel 4's ability to comply with its remit as a public service broadcaster and therefore with a journalistic, literary or artistic purpose.

37. In relation to the building blocks issue, Channel 4 accepts that it holds strands of information from which the aggregate information requested by Mr Ryland could be calculated. It also accepts the principle identified in *Johnson v ICO & MOJ* (EA/2006/0085) that the lack of pre-existing aggregated information cannot be relied upon as a basis upon which to refuse a FOIA request. However, Channel 4 submits that the *Johnson* principle does not require a public authority to aggregate derogated information, for the purpose of generating 'new' information to which the derogation may not apply. It contends that any

building block information subject to the derogation will still be derogated even if aggregated with other information, because it one of the purposes for which it is held will still be connected to journalism, literature or art.

38. Channel 4 also relies on paragraphs 37 and 64 of *Sugar (No 2)* to submit that the Tribunal should adopt a purposive approach when determining whether information is subject to the derogation. It argues that one purpose of the derogation is to prevent a public service broadcaster being placed at a disadvantage in comparison to rivals. Channel 4 argues that the Tribunal, when considering the derogation, should consider whether publishing the information would place the public service broadcaster at a disadvantage in respect of a derogated purpose in comparison to a commercial rival. Such as outcome, it submits, is an indication that the derogation should apply.

Conclusion on issues ii, iii & iv

39. The Panel agreed that FOIA must be understood and applied by considering the content of information held by a public authority rather than any particular form in which the information may be held. This is explicit in s.84 which defines information as being 'information recorded in any form'. In the context of the derogation, the determining factor is the purpose for which information is held.

40. The Panel was satisfied that the act of combining derogated information with other information does not have the effect of removing any direct link that may exist between the content of the information and the purposes connected to journalism, literature or art, even if the aggregated information is intended to be used differently. Provided there is a sufficiently direct link between the content of information held by a public service broadcaster and the purposes of journalism, literature or art, that information will be subject to the derogation.

41. The Panel therefore considered whether the derogation applied to the various building blocks of information identified by Channel 4, from which the aggregate information requested by Mr Ryland would be constructed. The Panel concluded that the derogation did apply, for the following reasons:

- i. The Panel decided it was beyond dispute that one of the purposes for which information about advertising revenue from creative partnerships, sponsorship, product placement and advertiser-funded programming was held must have a sufficiently direct link with Channel 4's output and be subject to the derogation. This is because the advertising to which the information relates has an enhanced status and deliberately visible presence within the programmes being broadcast. As such the activity to which the information has a direct link would come within the first of the three activities of functional journalism identified first by the Tribunal and subsequently the Supreme Court in paragraph 39 of *Sugar (No 2)* - that is the collecting, gathering, writing and verifying materials for publication. Mr Ryland appears to have conceded this point.
- ii. However, in the Panel's view, information about revenue from spot advertising came into a different category. This was because although Channel 4 exercises some editorial control and regulatory responsibility for traditional advertising, Ms Djurdjevic confirmed at the hearing that the former was quite limited in

nature. It is self-evident that advertising output is qualitatively different to programme output. However, the Panel concluded that it is still output, and noted that no distinction is made by any of the Supreme Court opinions in *Sugar (No 2)* between different types of output. Importantly, in the context of the purposes for which Channel 4 holds information about advertising revenue, the Panel noted that there is a direct link between information about advertising revenue from all sources and Channel 4's ability to purchase and fund programmes for broadcast.

- iii. The Panel decided that, while it may not be the predominant purpose for which it is held, there is a sufficiently direct link within Channel 4 between information about revenue from traditional advertising and purposes that were journalistic, artistic or literary in nature for the derogation to apply. The Panel found that these linked purposes came broadly within the third category of functional journalism, confirmed by the Supreme Court, namely purposes connected with the maintenance and enhancement of standards and quality, including reviews of the standards and quality of particular areas of programme making.

42. Having decided these points, the Panel concluded that all of the information requested by Mr Ryland in an aggregated form was made up of building blocks of information that were subject to the derogation and therefore exempt from FOIA. As such, having regard to the content of the requested information rather than to the form in which it might be published, the Panel agreed with the conclusion of the DN that the information Mr Ryland had requested was also subject to the derogation.

Issues i & v: whether the information request was considered too narrowly by Channel 4 or the ICO, and whether further clarification ought to have been sought

43. The majority of the written submissions in this case relate to these remaining issues. **Mr Ryland** submits that the ICO did not consider or apply the 'building blocks' argument at the time of serving the DN, because the ICO interpreted his request for information as relating solely to information about advertising revenue from GBBO. He submits that Channel 4 initially appeared to agree with his reading of the DN, and contends that the channel also interpreted his request in the same narrow manner at an earlier stage of its response. Mr Ryland asserts that, given that his information request was open to misinterpretation, Channel 4 failed to comply with the obligation in s.16 FOIA to seek clarification of the scope of his request.

44. **The ICO** disputes that the DN considered only the issue of information about advertising revenue from GBBO, or that it failed to consider other building block information. and points to paragraphs 23-26 in support of this submission. The ICO accepts that later paragraphs of the DN refer only to information about revenue from GBBO but contends that the DN must be read as a whole.

45. In relation to the s.16 point, the ICO submits that Channel 4 appears to have considered Mr Ryland's information request broadly and points in particular to Channel 4's 14 February 2023 response to the ICO's request for information. The ICO also contends that Mr Ryland is unable to raise in the course of this appeal the issue of Channel 4's compliance with s.16 because this was not considered in the DN.

46. **Channel 4** submits that the DN, read as a whole, makes clear that the ICO interpreted Mr Ryland's request for information broadly, as he intended, and contends that Mr Ryland's assertion that it presents as considering only information about advertising revenue from GBBO reflects a partial reading.

47. In relation to the s.16 point, Channel 4 submits that there was no breach of this duty because there was no ambiguity about the scope of Mr Ryland's request. However, Channel 4 acknowledges that, as set out in the statement of Rebecca Miller, some of the correspondence sent to Mr Ryland by staff at Channel 4 staff at times demonstrated a subjective misunderstanding of the scope of his request. However, the channel contends that overall its response to the information request was unambiguous and reflected a broad interpretation.

Conclusions on issues i & v

48. The Panel found that the drafting of the DN was suboptimal, in that it is both unduly brief and at times refers solely to information about advertising revenue from GBBO. For example, at paragraph 21 the DN states:

" The information requested, relates directly to Channel 4 output as Channel 4 broadcasts "The Great British Bake Off" and makes editorial decisions to enhance funds it can receive from advertising during the programme. Channel 4's revenue is generated through commercial activities including advertising and sponsorship. This revenue helps to pay for the programmes Channel 4 broadcasts and given the popularity of "The Great British Bake Off" securing these rights is enhanced by having lucrative sponsorships including the Sainsbury sponsorship."

49. However, the Panel accepted that, read as a whole, the DN refers to all advertising broadcast by Channel 4, albeit rather succinctly. In the Panel's view, the DN would have been enhanced by a more detailed explanation of the matters investigated, the route by which the ICO determined that each of the building blocks was subject to the derogation and the reasons why aggregation of the information has no effect. The Panel concluded that the brevity of the explanation provided in the DN contributed significantly to the burden on the parties to this appeal. However, the conclusion reached in the DN is in accordance with the law and is upheld.

50. In respect of the s.16 issue, the Panel determined that this was an issue capable of having been addressed in the DN, in the context of this case. The Panel found that some of the correspondence from Channel 4 staff about Mr Ryland's request was clearly mistaken about the scope of the information he was seeking. However, the Panel concluded that the overall response by Channel 4 was correct in terms of identifying the entire scope Mr Ryland's request and, as a consequence, no clarification by Channel 4 pursuant to s.16 had been required.

Conclusion

The Panel therefore dismisses this appeal and upholds the 3 April 2023 DN.

(Signed)

HHJ Moira Macmillan

DATE: 9 July 2024

Promulgated: 10 July 2024

Crown Copyright © 2024