

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2015

Public Authority: The British Broadcasting Corporation (BBC)

Address: Room BC2 B6, Broadcast Centre
White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information about expenses claims made by Tony Hall, Director General from 10 September 2013 to the date of the request. The BBC refused to provide the requested information under sections 14, 21, 22, 38 and 40(2) FOIA. It also said that some information was not subject to FOIA as it is held for the purposes of 'journalism, art or literature'.
2. The Commissioner's decision is that the BBC has correctly applied section 22 and section 40(2) FOIA to some of the withheld information. The BBC correctly stated that some information was held for the purposes of journalism, art or literature and therefore the BBC was not obliged to comply with Parts I to V of FOIA.
3. The BBC incorrectly applied section 14 to the request and section 21, section 38 and section 40(2) FOIA to some of the withheld information.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under section 38 FOIA and the names of attendees and menu information withheld under section 40(2) FOIA.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 10 September 2014 the complainant requested information of the following description:

"Please note that I am only interested in information which relate to the period September 10 2013 to the present day.

1. For the aforementioned period could you please provide a list of occasions when Lord Hall has wined and dined and or provided hospitality for individuals at the expense of the BBC. Please note I am interested in all occasions which were paid for by the BBC and which took place in restaurants and or cafes and or bars and eating establishments and or other venues away from BBC premises. These events will include breakfasts, brunches, lunches and dinners and drinks.
 2. In the case of each occasion can you please provide the date and time of the event. In the case of each occasion can you please identify other individuals who were present. These will include BBC employees and representatives as well as guests from outside the Corporation.
 3. In the case of each occasions can you please identify the venue(s).
 4. In the case of each occasion can you please provide a copy of any relevant expense claim(s) which was submitted by Lord Hall and or which was submitted on his behalf. In the case of each expense claim can you please supply all supporting documents include copies of appropriate bills and receipts."
7. On 9 October 2014 the BBC responded. It provided the complainant with some of the requested information (which had already been published), it withheld some information under section 22 FOIA as it said it was intended for future publication and it said that some of the information requested fell outside the scope of the FOIA as it was held for the purposes of 'journalism, art or literature'.
8. The complainant requested an internal review on 3 November 2014. The BBC sent the outcome of its internal review on 1 December 2014. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 5 December 2014 to complain about the way his request for information had been handled.
10. During the course of the Commissioner's investigation, the BBC also said that it considered section 14 was applicable as it considered the request to be vexatious, and in the alternative it additionally applied section 21, 38 and 40(2) FOIA to some of the withheld information.
11. The Commissioner has considered whether the BBC correctly applied section 14, 21, 22, 38 and section 40(2) FOIA to the withheld information and whether some of the withheld information is not subject to the FOIA because the information is held for the purposes of 'journalism, art or literature'.

Background

12. The BBC explained that Tony Hall is the Director-General of the BBC, meaning that he is the editorial, operational and creative leader of the BBC, with responsibility for a global workforce running services across television, radio and online. The Director-General is the Chief Executive Officer of the BBC and its Editor-in-Chief.
13. It said that information about the Director-General's expenses is published in the BBC's Publication Scheme.
14. The BBC's expenses policy applies to all staff, including the Director-General, and is published online. The principle behind the policy is to ensure that members of staff are reimbursed for all necessary expenditure reasonably incurred in the performance of their duties. All expenses must be approved by an authorising manager and authorising managers have no authority to vary the policy.
15. Since 2009 the BBC has voluntarily published the expenses for all senior managers who have a full time equivalent salary of £150,000 or more or who sit on a major divisional board. The BBC also publishes the salaries, total remuneration, declaration of personal interests, and gifts and hospitality register for these individuals. This information is published quarterly.

16. It said that the Director-General has submitted eight expense claims falling within the scope of the request. These expense claims have now been published in the BBC's Publication Scheme and these expense claims are clearly labelled under the grouping 'external hospitality'. It said that the Director-General's expenses falling within the scope of this request have been authorised by the Managing Director, Finance and Operations.

Reasons for decision

Section 14

17. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
18. The term 'vexatious' is not defined in the Act but following guidance from the Upper Tribunal the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. It is important to recognise that in applying section 14 it is the request that must be considered rather than the person making the request. A public authority cannot simply refuse a new request on the basis that it has classified previous requests from the same individual as vexatious.
19. However in considering whether the current request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, the context and history in which the request was made can be a major factor in determining whether the request is likely to have such an impact. Therefore the Commissioner will consider the relevance of other requests that the complainant has made together with his previous dealings with the BBC.

Frequent or overlapping requests

20. The BBC explained that to comply with this request will impose a significant burden on the BBC when it is considered in the round. It said that the number, breadth, pattern and duration of requests are all potentially part of the relevant context.
21. It said that the complainant has submitted a large number of requests to the BBC since 2005 and these requests cover a variety of topics, including several relating to senior management expenses.

22. In addition it explained that the ICO has recently investigated (and did not uphold) a complaint from the applicant in relation to expenses claimed by members of the BBC Executive Board. The request relevant to this Notice was submitted to the BBC the day after it responded to the request described above. The decision notice for the request described above can be accessed using the following link:

https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043161/fs_50560168.pdf

23. It said that according to its records, the complainant has submitted the following number of requests to the BBC:

Year	Requests submitted by the applicant to the BBC
2005	8
2006	22
2007	32
2008	24
2009	32
2010	13
2011	16
2012	11
2013	17

24. It summarised that over the previous 10 years the complainant has submitted an average of 18.6 requests a year. In other words this means that the applicant has submitted, on average, a new request to the BBC approximately every 14 working days since the Act came in to force.

25. Furthermore, according to its records the applicant has requested 42 internal reviews and made 40 complaints (including this one) to the ICO over the same period. This means that the applicant has complained to

the Commissioner about more than 20% of the responses that he has received from the BBC over this 10 year period.

26. It explained that between 16 February 2006 and 10 September 2014 the complainant has made 19 requests to the BBC about expenses. In addition the complainant has made a further subsequent request relating to expenses dated 22 January 2015.
27. It said, as noted in *Dransfield*¹, the greater the number of previous requests that an individual has made to the public authority, the more likely it may be that a further request may properly be found to be vexatious. Of course the volume of requests alone will not determine whether a request is vexatious, however, it believes that the large number of requests submitted by the complainant (and the large number of complaints about the BBC's responses) is relevant in this case because it demonstrates the considerable burden that the complainant's requests have placed on the BBC.
28. It said that the burden of future requests is also relevant, and as observed in *Dransfield*: "a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the public authority". In that case the history of previous dealings indicated a high likelihood that, if the public authority had responded in the normal way to the request, it would have faced "a barrage of further correspondence and requests".
29. The BBC said that since complaining to the ICO about this request the complainant has submitted a further request to the BBC about the expenses of senior management, therefore it believes that this demonstrates that there is a high likelihood that he will continue to make requests to the BBC about the expenses of senior management, particularly if the BBC is required to disclose the information that is the subject of this complaint. It argued that given that information is proactively published by the BBC about expenses, it considers there to be very limited public interest or objective value in this information, and therefore dealing with these types of requests represent a disproportionate drain on the BBC's resources. It also believes that if this type of information is disclosed ahead of the BBC's planned publication schedule it will encourage other requesters to make similar requests, adding to the burden.

¹ *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC)

30. The BBC said that the breadth of this request is also a relevant consideration. It argued that the complainant appears to be hoping that by asking for information about the Director-General's expenses for the period of a year, something noteworthy or otherwise useful will be caught by the request. It said that aside from focussing on the Director-General, there does not appear to be any particular motivation behind this request besides obtaining information about expenses in advance of their publication later this year.
31. It explained that one of the ICO's indicators that it considers to be particularly relevant in this case is 'frequent or overlapping requests' when the requester "*sends in new requests before the public authority has had an opportunity to address their earlier enquiries*". It said that on 10 September 2014 the complainant made this request and another unrelated request to the BBC. On the same day the complainant also received a response from the BBC in relation to an earlier request about senior management expenses, and was still waiting for a response to another request he had made. Before the applicant received a response to this request about the Director-General's expenses he also made three further requests to the BBC. The BBC stated that although these requests do not all relate to senior management expenses, the collective burden on staff time is significant, and it is in this context that they consider that the current request is an improper use of FOIA.
32. The Commissioner considers that whilst the complainant has made a significant number of requests to the BBC since the inception of FOIA, this does not alone provide sufficient evidence to demonstrate that this request is vexatious. The BBC has highlighted that 19 of the requests relate to information about senior management expenses, and the ICO has recently issued a Decision Notice relating to a request made by the complainant relating to expenses which was not upheld. Furthermore the BBC has explained that it considers responding is likely to increase further requests being made as the complainant has already submitted another request to the BBC on this subject area and the BBC has provided the Commissioner with evidence of overlapping requests, some relating to expenses, at the time and prior to this request being made. Whilst this does indicate that requests on this subject are creating a burden upon the BBC, because of the transient nature of expense claims it is not unexpected that a number of requests might be made on this subject area.

Burden on the public authority

33. The BBC went on to explain why requests about expense claims are particularly burdensome. It said that requests about expense claims are particularly difficult and time consuming for the BBC to handle because

of the way in which expense claims are processed and the way in which the BBC records this information.

34. In terms of the processing of expense claims, it said receipts are filed in the order that they are submitted to the BBC, rather than by chronological order or by the individual who submitted the claim. Claims can also be submitted up to six months after the expense has been incurred, meaning that the information it holds is not in a systemised electronic filing system linked or indexed to a particular activity (ie in this case it was not possible to electronically search the Director-General's expenses using key words such as 'external hospitality').
35. Consequently, it said in order to locate the requested information the BBC will often be required to manually examine each expense claim and receipt it holds. Before any receipts can be reviewed, they also need to be requested from the BBC's outsourced partner which provides finance and accounting services across the BBC.
36. It explained that requests for receipts necessarily involve the BBC spending a long time redacting exempt information (eg names of junior staff, home addresses and bank details) and this time cannot be taken into account when calculating the cost of compliance for the purposes of section 12. Furthermore, it said because expense claims are checked for accuracy prior to publication, disclosure in advance involves the duplication of work.
37. The Commissioner considers that because expense claims are not filed in chronological order or by the individual who submitted the claim, it will impose a burden upon the BBC to collate the required information for individual expenses requests. Whilst the BBC has not applied section 12 FOIA, the burden of responding to this request is relevant when considering the application of section 14 FOIA. Whilst the BBC does not publish the precise time the expense was incurred, the names of any guests, the claim form, the name of the venue, the original receipt or a copy of the payment method, it does regularly publish who made the claim, the amount and the reason for the claim. Responding to individual requests for expenses claims is likely to impose a significant burden upon the BBC, in addition to the work required to collate the expenses data it publishes quarterly. However as the information it regularly publishes only covers part of the information requested this would not be sufficient to respond to this request.

The value or serious purpose of the request

38. The BBC said that it considers the correct approach in assessing the value or serious purpose of this request is to only consider any wider public benefit in the release of the requested information over and

above the public benefit in the disclosure that the BBC has already made (or will make in the future). In other words, the public interest in knowing which BBC senior managers have made expense claims, the value of those claims, and the reason for incurring those expenses should be discounted because this information is already in the public domain (or will be published in future).

39. The BBC explained that it publishes a summary of each expense claim in its Publication Scheme. This includes the name of the individual making the claim; the grouping and sub-type for the claim; the reason for the claim; the date the expense was incurred; and the amount. The BBC will also often publish an accompanying note if a further explanation would be helpful to provide some context. For example, it might be noted that accommodation was more expensive than usual because of an event taking place in the same city, or note how many guests were present at a function.
40. The BBC considers that its established approach to the publication of expenses data is proportionate and sensible because the BBC publishes what can objectively be considered of greatest benefit to the public in terms of promoting accountability and transparency (ie the name of the individual who made the claim, the amount of the claim, and the reason for the claim). It also believes that its method of disclosing information is the safest and most practicable way of achieving the balance between giving the public information about individual expense claims and protecting senior managers from the unfair disclosure of their personal information.
41. The BBC does not consider that there is any value in the exact time of day that the expense was incurred because it makes no difference to the licence fee payer. It is the amount of the claim and whether the claim has been authorised in line with the BBC's rigorous expenses policy which is important. It noted however that sometimes the approximate time of the event is published (eg. the first expense claim falling within the scope of the request is described as a 'business breakfast meeting' suggesting that the expense was incurred at some time in the morning).
42. It acknowledged that there is a serious purpose or value in knowing who meets with the Director-General. However, it does not consider that it would be proportionate in the wider circumstances of this case to comply with the request. Again, it is worth noting that sometimes this information is however published by the BBC.
43. It does not believe that there is any value in disclosing the original claim forms. It said that claim forms typically include details such as where claims should be sent for processing; a reference number for the claim; the name of the person who authorised the expense; the charge code

for the individual making the claim; the individual's staff ID; and information about when the claim was submitted. These details mean very little to anyone outside the BBC's finance department and it has already disclosed to the applicant who authorised the Director-General's expenses.

44. It does not consider that there is any real value in disclosing the name of the venue or the individual items off that venue's menu that were ordered. It suggested that what is important is how much public money has been spent and whether it has been spent for a legitimate business purpose in line with the BBC's expenses policy.
45. Finally, it argued that there is no wider benefit in publishing information about the method of payment as it is irrelevant to licence fee payers how a bill has been settled.
46. The Commissioner disagrees that there is no serious purpose or value in disclosure of some of the further information, over and above what the BBC regularly publishes quarterly.
47. The BBC reiterated that it considers that the majority of the requested information (that is not already in the public domain or scheduled for publication later this year) is of limited value and to respond to this request will also impose a significant burden on the BBC and therefore it believes that disclosure would not justify the impact on the BBC.
48. It accepts that there is a serious purpose or value in knowing who meets with the Director-General. However, this is not just a request for a list of individuals that the Director-General has met with. When all of the circumstances of this request are taken into account, including the high number of requests that the BBC has received (several of which relate to expenses) and expects to receive in future, it does not consider that the serious purpose in the requested information provides sufficient grounds to justify the disruption and irritation that would be caused by complying with the request. It does not believe that it would be proportionate to respond on the basis that there is an aspect of this request which has a serious purpose. Furthermore, in the circumstances of this case the value of any information if it were disclosed would be very limited because it considers that the names of the majority of attendees are exempt under section 40(2) or are not subject to the FOIA because the information is held for the purposes of 'journalism, art or literature'.
49. The Commissioner considers that the complainant has made a significant number of requests to the BBC and several have related to expenses. However due to the transient nature of expenses claims this would not be unreasonable. The Commissioner also notes that the complainant is a journalist, with a particular interest in media journalism

and the BBC, and the requests should be seen in this context. The Commissioner also considers there is a serious purpose or value in disclosure of further information, over and above what is regularly published by the BBC, and has balanced this against the burden it would create to respond. The Commissioner has concluded that whilst the BBC has supplied some evidence of the burden of the request and the impact of other request that may follow, the evidence does not convincingly explain how this burden would be oppressive and to a level that what would make the requests unjustified. On balance the Commissioner considers that whilst the BBC has made some relevant arguments to support its application of section, the submissions are not sufficient in this case to conclude that this request was vexatious.

50. The Commissioner therefore considers that section 14 FOIA was incorrectly applied in this case. As the Commissioner has found that section 14 is not engaged he has gone on to consider the other exemptions applied.

Derogation

51. Schedule One, 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."

52. This means that the BBC has no obligation to comply with part I to V of the Act where information is held for 'purposes of journalism, art or literature'. The Commissioner calls this situation 'the derogation'.
53. 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 information is caught by the derogation. The Commissioner's analysis will now focus on the derogation.
54. 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)

55. The Supreme Court endorsed this approach 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.
56. 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.
57. If a sufficiently direct link is established between the purposes for which the BBC holds the information and any of the three derogated purposes – i.e. journalism, art or literature – it is not subject to FOIA.
58. 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.”

59. However, the Supreme Court said this definition should be extended to include the act of broadcasting or publishing the relevant material. This extended definition should be adopted when applying the ‘direct link test’.

60. The Supreme Court also explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). Therefore, in order for the information to be derogated and so fall outside FOIA, there should be a sufficiently direct link between the purpose(s) for which the information is held and the production of the BBC's output and/or the BBC's journalistic or creative activities involved in producing such output.
61. The BBC explained that two of the expense claims relate to business meetings between the Director-General in his role as the editorial, operational and creative leader of the BBC, and individuals who we would describe as 'talent'. It said although it does not hold minutes about what was discussed during these two business meetings, these individuals have a direct involvement in the creation of the BBC's output and it therefore considers that there is a sufficient link between the purpose of these meetings and the creation of the BBC's output.
62. The Commissioner is satisfied that the complainant's request for the expense information for two of the claims relates to the purposes of creating content and producing output given who the attendees were and it was held, to some extent, for the purposes art, journalism or literature.
63. The Commissioner is satisfied that information relating to these two expense claims is derogated. Therefore, the Commissioner has found that this information is held for the purposes of journalism, art or literature and that the BBC was not obliged to comply with Parts I to V of FOIA.

Section 21

64. The BBC applied section 21 during the course of the Commissioner's investigation to the information it had applied section 22 to at the time of the request. This is the amount of the expense claimed. This is because this information had only been published by the time the Commissioner began his investigation into this complaint. As the information was not however publicly available at the time of the request, the Commissioner does not consider section 21 FOIA would have applied.

Section 22

65. Section 22 FOIA applied to information which is planned for future publication. In this case the amount of the relevant expenses had been published by the time the Commissioner began his investigation into this case. The Commissioner is satisfied that the BBC planned to publish this

information at the time of the request, and as it has now been published, section 22 FOIA was correctly applied at the time of the request.

Section 38

66. Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

67. The BBC has withheld the name of one of the venues visited by the Director General.

68. The BBC explained that it has received direct threats concerning the Director- General, following the announcement that the BBC would not renew Jeremy Clarkson's contract with the BBC. As a result of these threats, it has been necessary to increase the security provided to the Director-General. Although these matters are unconnected, the BBC argued that it does not want to jeopardise the health and safety of the Director-General. It considers that disclosing the name of the café will endanger both Tony Hall and the guests he takes to that venue.

69. Whilst the Commissioner has taken the BBC’s concerns into account he does not consider that the withheld information demonstrates any particular pattern or regular usage of the venue in question and the BBC have supplied no additional evidence in support of this. The Commissioner does not consider there to be a causal link between the disclosure of the name of the venue visited by the Director-General and the harm the BBC has argued disclosure would be likely to cause. Section 38 was not therefore correctly engaged in this case and the name of the venue withheld under this exemption should now be disclosed.

Section 40(2)

70. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.

71. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

“data which relate to a living individual who can be identified –

- (i) from those data, or
 - (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”
72. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
73. The BBC had withheld the following information under this exemption:
- The Director General's staff ID
 - the names of some of the attendees as indicated in Appendix B
 - the individual items of food and drink which have been ordered
 - the name of the server at each venue
 - The Director General's membership number at the venue
 - the numbers of the credit card used by the Director General for payment
 - the amount of one bill paid for personally by the Director General.

The Commissioner considers the information withheld under section 40(2) is information from which the data subjects would be identifiable.

74. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

Likely expectation of the data subject

75. In relation to the Director General's staff ID, the name of the server at each venue, the Director General's membership number at the Ivy, the numbers of the credit card used for payment and the amount of one

bill paid for personally by the Director General, this is not information the data subjects would reasonably expect to be disclosed into the public domain. This is because this information could be attempted to be used fraudulently or relates to the Director General's personal affairs, or private individuals working at the privately owned venues.

76. In relation to the names of attendees, the BBC explained that it redacted the names of two of the individuals who it believes would not reasonably expect their names to be released.. The BBC does not consider that they would expect to be named by the BBC in these circumstances because it could lead to speculation about their role. Disclosure is therefore likely to erode these individuals' trust and confidence in the BBC's handling of their personal data.
77. The Commissioner considers that the attendees were high profile figures and therefore should have some expectation that their names may be released in the context of meeting with the Director General.
78. The BBC acknowledged that the Director General would expect that his expenses would be disclosed because the BBC has published them since he took up the post on 2 April 2013. However, it does not believe that he would reasonably expect that the receipts, containing a list of each individual item that was ordered, would be released. This is because the BBC does not routinely publish the original receipts relating to each expense claim and it believes it is reasonable in this case to base the Director-General's expectations of disclosure on a practice which has been established at the BBC since 2009.
79. In addition, it said BBC members of staff regardless of seniority have an instinctive expectation that the BBC, in its role as a responsible employer and data controller, will not disclose certain personal information. This includes information relating to an individual's dietary preferences which will attract a strong general expectation of privacy as it is inherently personal to the data subject. Despite this hospitality being ordered for the purpose of a business meeting, an individual's decision of what to eat or drink is a personal decision which does not have any relevance in terms of the performance of that individual's public duties.
80. Whilst the Commissioner accepts that disclosure of an individual's menu choice may in some circumstances disclose sensitive personal data relating to a person's health or religion, upon viewing the withheld information he does not consider disclosure would have this effect in this case. He again therefore considers that in the context of the menu information appearing upon the Director General's expense claims, there would be a reasonable expectation that this may be disclosed

into the public domain as the information could reasonably be used to understand whether expenses had been necessarily incurred.

Damage and distress

81. Again, in relation to the Director General's staff ID, the name of the server at each venue, the Director General's membership number at the Ivy, the numbers of the credit card used for payment and the amount of one bill paid for personally by the Director General, the Commissioner accepts disclosure could cause damage or distress to the data subjects. This is because this information could be attempted to be used fraudulently or relates to the Director General's personal affairs or private individuals working at privately owned venues.
82. In relation to the names of attendees again the Commissioner considers that the individuals concerned are senior figures and the BBC has not provided any convincing arguments about how damaging speculation is likely to flow from disclosure.
83. In relation to the menu choices, whilst the Commissioner accepts that disclosure of an individual's menu choice may in some circumstances disclose sensitive personal data relating to a person's health or religion, which could cause damage and distress, upon viewing the withheld information he does not consider disclosure would have this effect in this case.

The legitimate public interest

84. The BBC said that it recognises that there is a public interest in transparency and ensuring that the BBC makes sound decisions. The BBC must make the best use of the income it receives from the licence fee, and is ultimately accountable to the licence fee payers. The BBC also recognises that the public has a legitimate interest in understanding how a publicly funded organisation allocates its funding, and in this case knowing how much money the Director-General has spent on providing external hospitality for BBC members of staff and guests. Therefore it can be argued that details of any expense claims should be disclosed to promote openness and transparency.
85. The BBC argued that the legitimate public interest is met by the quarterly publication of the Director-General's expenses. It also said the Director-General is subject to the BBC's expenses policy, and all of his expenses must be approved by an authorising manager, in this case the Managing Director of Finance and Operations, who has no authority to vary the policy. Disclosure would add little of value in

terms of aiding the public's understanding of how the BBC spends the licence fee and therefore we do not consider that disclosure is necessary. The Commissioner acknowledges that the oversight regime BBC expenses are subject to, reduces, to some extent, the public interest in disclosure, as there is no evidence of a systemic problem. For example, in comparison to the case of MPs' expenses. However, the Commissioner also finds that the intrusiveness of the information to be disclosed is not as great as in the case of MPs' expenses.

86. The Commissioner considers that that there is a legitimate public interest in disclosure of the names of attendees and menu choices as it provides further information as to why the expense was necessary, that is who the Director General deems it necessary to meet with and that the expenses claimed are reasonable in terms of the menu choices being purchased. The Commissioner finds that the disclosure of the amount of expense alone does not sufficiently meets the legitimate public interest in this case, given the significance of the public interest in how the leader of the BBC claims expenses. Disclosure is necessary to meet the legitimate public interest and it wouldn't be unwarranted by reason of the any prejudice caused to the data subjects. For this information disclosure would not be unfair and would meet the requirements of schedule 2 condition 6 of the DPA. Disclosure would not breach the first data protection principle.
87. The Commissioner therefore considers section 40(2) FOIA was incorrectly applied to the withheld names of attendees and the menu choices in this case. Section 40(2) was applied correctly to the other information as disclosure would be unfair and breach the first data protection principle.

Other Matters

88. The Commissioner has upheld the application of section 22 FOIA in this case but given this information has been disclosed into the public domain, the Commissioner would expect this information to be included in the disclosure of the claims and that redactions will only be made to information the Commissioner considers was correctly withheld under section 40(2) FOIA.

Right of appeal

89. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

90. 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.
91. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
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SK9 5AF