

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 October 2020

**Public Authority:** British Broadcasting Corporation (BBC)

**Address:** Broadcasting House  
Portland Place  
W1A 1AA

### Decision (including any steps ordered)

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1. The complainant has requested the number of a particular type of complaint about content on the BBC's BBC News website, across a number of years. The BBC refused to comply with the request as it considered that the requested information was held for the purposes of journalism, art or literature and was therefore outside the scope of the FOIA. The complainant disputes this.
2. The Commissioner's decision is as follows:
  - The information the complainant has requested is derogated and does not fall within the scope of the FOIA.
3. The Commissioner does not require the BBC to take any remedial steps.

### Request and response

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4. On a date that is not clear, the complainant wrote to the BBC and requested information in the following terms:

*"I would like the official number of complaints the BBC has received on the BBC news website based on the BBC being biased and fake news."*

*Please provide the information for the dates of January 1st 2020 until July 1st 2020 and I would like to see a comparison breakdown of the statistics comparing to the same period in 2019, 2018 and 2017.*

*If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.*

*If you can identify any ways that my request could be refined I would be grateful for any further advice and assistance."*

5. In correspondence dated 16 April 2020, the BBC responded. In this correspondence, the BBC gives the date of the request as 15 July 2020. As its response to it would therefore pre-date the request for information, the Commissioner assumes that one or other of the dates given in the BBC's response is a typographical error. However, the BBC explained that it did not consider that the requested information was caught by the FOIA because it was held for the purposes of 'art, journalism or literature' ie the information was derogated.
6. In response to the complainant's request for an internal review on 16 July 2020, the BBC explained that, in cases where the requested information is not caught by the FOIA, it is not obliged to carry out a review.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 28 July 2020 to complain about the way his request for information had been handled.
8. The Commissioner's initial assessment was that the information the complainant has requested was derogated and that, as such, the BBC was not obliged to respond to the request under the FOIA. She directed the complainant to a number of her published decisions in which she found that information about complaints to the BBC was not covered by the FOIA. The Commissioner invited the complainant to withdraw his request, but he preferred to progress to a formal decision notice.
9. The Commissioner has considered whether the requested information is derogated ie falls outside the scope of the FOIA.

## Reason for decision

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10. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held.
11. The FOIA only applies to the BBC to a limited extent. Schedule 1 of the FOIA defines the BBC as a public authority for the purposes of the FOIA only "*...in respect of information held for purposes other than those of journalism, art or literature.*"
12. This is known as the 'derogation'. This means that information that the BBC holds for the purposes of journalism, art or literature - in broad terms, its output or related to its output – is not covered by the FOIA. If information falls within the derogation, then that is the end of the matter; there is no public interest test or similar provision to consider the merits of disclosure.
13. Certain information that the BBC may hold is derogated because, although it is publicly funded through the licence fee, the BBC commercially competes with other broadcasters who are not subject to the FOIA. Releasing information about its output, or related to its output, could therefore commercially disadvantage the BBC.
14. Broadly, BBC information that is covered by the FOIA includes information about: how the BBC is managed and run, including the TV licence; the BBC's employees and its human resources practices; and the BBC's performance.
15. Broadly, BBC information that is not covered by the FOIA includes the following: information about the BBC's on-screen or on-air 'talent' ie its presenters and journalists; information about BBC programmes including any spend or editorial decisions associated with its programming; materials that support the BBC's output, such as the script of a television programme or a source drawn on for an investigation; and viewer and listener complaints to the BBC about the above.
16. The derogation as it applies to the BBC is discussed in more detail in numerous published decisions made by the Commissioner, such that she does not consider it necessary to reproduce that detail again here. However, key to the derogation is the Supreme Court decision in *Sugar*

*(Deceased) v British Broadcasting Corporation and another [2012] UKSC 4<sup>1</sup>*

17. The complainant has requested the number of a particular type of complaint about the news the BBC publishes on its BBC News website that the BBC may have received over a number of years.
18. The complainant has argued that the only way the public can make an informed decision as to whether or not the BBC represents them, is a right to know. He says his request is simply for the number of people who believe the BBC does not represent their views. The request's purpose is to measure whether the BBC has lost the support of the British public who pay to keep it funded. The complainant considers that the information he has requested is important as it will provide those who are considering "defunding" the BBC with facts, rather than them "being misled by emotions". It is a discussion that the complainant considers needs to be had.
19. Finally, the complainant has noted that the BBC published an article on its BBC News website in September 2020 about the number of complaints that ITV had received about one of its programmes. He considers it unfair that the BBC is not obliged to release information about the number of complaints it has received about a particular matter.
20. As explained above, information about complaints that the BBC receives, including the number of complaints, is derogated information. This type of information is associated with the BBC's output because the BBC will use information generated by the number and type of complaints it receives to make editorial decisions about its news output; either its broadcast news content or content it publishes on its BBC News website.
21. The complainant's concerns are not unreasonable, but the Commissioner cannot take account of the value that the information he has requested may or may not have. As the Commissioner explained to the complainant in her initial assessment, she is satisfied, based on the very well established precedent set in the numerous other decisions she has made in cases involving the BBC, that, if held at all, the information requested is held for the purposes of journalism, art or literature. The BBC derogation is set out in Schedule 1 of the FOIA. The information

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<sup>1</sup> [http://www.supremecourt.gov.uk/docs/UKSC\\_2010\\_0145\\_ps\\_v2.pdf](http://www.supremecourt.gov.uk/docs/UKSC_2010_0145_ps_v2.pdf)

the complainant concerns viewer and listener (and reader) complaints; it is therefore derogated information and is not caught by the FOIA.

## Right of appeal

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22. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**