

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 August 2023

**Public Authority:** British Film Institute

**Address:** 21 Stephen Street  
London W1T 1LN

### **Decision (including any steps ordered)**

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1. The complainant has requested information from the British Film Institute (BFI) about the setting up of a new body. BFI provided the complainant with relevant information, with personal data redacted under section 40 of FOIA. BFI withheld other information under section 36 which concerns prejudice to the effective conduct of public affairs.
2. The Commissioner's decision is that, under section 3(2) of FOIA, BFI can't be said to hold under FOIA the information it voluntarily provided or which it withheld under sections 36 and 40. As such, there was no breach of section 1 or section 10 and it's not necessary to consider BFI's application of section 36 and 40 to information it withheld.
3. BFI doesn't need to take any corrective steps.

### **Background**

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4. The Commissioner understands that the idea for a new regulatory body, the Creative Industries Independent Standards Authority (CIISA) was conceived in 2017, in the wake of the 'MeToo' movement and the allegations against film producer Harvey Weinstein. CIISA's aim is to:
  - create better workplace culture across the creative industries

- investigate complaints; and
  - ensure that anyone who has suffered bullying or harassment can receive confidential advice and mediation.
5. CIISA was originally developed with the film, TV and music industries in mind. Recently however, the UK's leading broadcasters - BBC, Channel 4, Channel 5, ITV, and Sky - have all committed financial support to CIISA whose remit has expanded to include theatre, fashion and advertising.

## Request and response

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6. The complainant made the following information request to BFI on 27 February 2023:

"Can you please give me access to the transcripts or recordings or other notes, of the meetings (whether these are held by the BFI or the DCMS on behalf of the BFI) of all the meetings in which they took part in regard to the setting up of a new regulator for the creative industries (previously known as ISA and now CIISA)."

7. BFI responded on 21 March 2023 and advised it didn't hold any information within scope as it wasn't involved in setting up ISA/CIISA.
8. The complainant requested an internal review on 21 March 2023, providing evidence that suggested to them that BFI **was** involved in setting up ISA/CIISA. They said that Creative UK had told them that BFI was one of the participants in a series of 'roundtable' meetings to discuss setting up the new regulator.
9. As a result of a complaint to Commissioner, BFI provided an internal review on 30 June 2023. It advised that it doesn't, "hold transcripts, recordings or other notes of the meetings (whether these are held by the BFI, or the DCMS on behalf of the BFI) in regard to the setting up of 'a new regulator for the creative industries'..."
10. BFI explained that it wasn't charged directly with the responsibility for setting up CIISA. It said that the Department of Culture, Media and Sport (DCMS) had called for an industry-led body to look at developing a body and that Creative UK managed the subsequent process and meetings. BFI's former Director of Culture and Inclusion, Jennifer Smith, had been invited to participate in the initial DCMS round-table and subsequent meetings to establish the authority. In September 2022 Jennifer Smith had been seconded to the post of interim CEO to set up the new independent standards authority.

11. Finally BFI said that aside from the types of documents the complainant had requested, it did hold "records" but considered that these were exempt under section 36(2)(b)(ii) of FOIA.
12. As a result of a new complaint to the Commissioner, BFI reconsidered its response to the request. On 7 August 2023 it wrote to the complainant again. BFI provided the complainant with relevant information which it said in that correspondence that it does "hold", with personal data redacted. It confirmed its reliance on section 36 of FOIA to withhold other relevant information.

### **Reasons for decision**

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13. This reasoning first covers whether BFI can be said to hold under FOIA the information it holds that's covered by the complainant's request, and whether there was any breach of section 1 and section 10 of FOIA in respect of that information.
14. If necessary, the Commissioner will consider whether BFI is entitled to withhold relevant information under section 36 and 40 of FOIA.
15. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told if the authority holds the information and to have the information communicated to them if it's held and isn't exempt information.
16. Under section 3(2) of FOIA, information is held by a public authority – and so is caught by FOIA – if the authority holds it for its own purposes or if another person holds it on behalf of the public authority.
17. Under section 10(1) of FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
18. In its submission to the Commissioner BFI reiterated that it isn't the originator of the information it provided on 7 August 2023 (or the information it withheld). It confirmed that it was DCMS who called for an industry-led body to look at developing the new regulatory body and that Creative UK managed the subsequent process and meetings.
19. BFI says it's only holding the above information as its "previous employee" was seconded to CIISA and they saved those records on BFI's IT systems. BFI subsequently confirmed to the Commissioner that the individual saved the information to BFI's system as CIISA didn't have its own IT infrastructure until April 2023.

### **The Commissioner's view**

20. BFI has provided the complainant with certain information that's relevant to their request. However, BFI has stated that it doesn't consider it holds this information for its own purposes; it holds the information simply because a member of staff who was subsequently seconded to CIISA stored that information on BFI's IT system. As such, BFI is indicating that the information isn't caught by FOIA, but that BFI provided it to the complainant voluntarily in order to provide as much information as it could.
21. The Commissioner notes that BFI wasn't responsible for setting up the industry-led body tasked with exploring developing a new regulatory body that became CIISA. DCMS instigated the project, and Creative UK managed it.
22. BFI could, however, be said to hold the information in question under FOIA if there's an appropriate connection between the information and BFI's functions.
23. The information, which the Commissioner has reviewed, comprises papers, spanning the period 25 August 2022 to 31 March 2023, associated with initial governance matters and preliminary meetings to discuss and explore setting up a new body to be charged with creating a better workplace culture across the creative industries. BFI's function meanwhile is to grow and care for BFI National Archive (a film and television archive) and to support the growth of the UK screen industries. The Commissioner doesn't consider there's a clear connection between the information and BFI's functions.
24. The Commissioner therefore accepts that, under section 3(2) of FOIA, BFI cannot be said to hold the information it provided to the complainant, or which it withheld, on 7 August 2023. It happened to have that information on its IT system because its employee who was involved in the initial meetings and discussions and was subsequently seconded to the new body, filed it there. The seconded employee had filed it on BFI's system for their own purposes, and not BFI's purposes. Furthermore some of the information BFI in scope post-dates the request as it concerns meetings that didn't take place until March 2023. BFI therefore can't have held this information in any capacity at the time of the request.
25. The Commissioner is satisfied that BFI didn't hold the information under section 3(2) of FOIA but provided it outside of the Act, in order to be helpful. As such, there was no breach of section 1 or section 10 of FOIA in respect of that information.

26. Finally, BFI redacted some of the information from the documents it provided under section 40 and withheld other information under section 36 of FOIA. But because none of the information in scope is caught by FOIA, the Commissioner can't consider whether or not BFI applied section 36 and 40 correctly to it. BFI chose to provide the complainant with information it was holding on behalf of another person, voluntarily and outside FOIA. And BFI chose to withhold some of the information. BFI is entitled to do both.

## Right of appeal

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27. 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: 0203 936 8963

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)

28. 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.
29. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**