

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2024

Public Authority: Channel Four Television Corporation
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant requested from Channel Four Television Corporation ("Channel 4") information relating to a potential conflict of interests. Channel 4 explained the information was covered by the derogation and excluded from FOIA.
2. The Commissioner's decision is that this information was held by Channel 4 for the purposes of 'journalism, art or literature' and does not fall inside FOIA. The Commissioner therefore upholds Channel 4's position and he does not require it to take any further steps as a result of this decision.

Request and response

3. On 21 February 2024, the complainant wrote to Channel 4 and requested information in the following terms:

"Please provide a copy of all documents and correspondence relating to the declaration of a potential conflict of interests by [name redacted] regarding his relationship to his wife, [name redacted], a senior manager at [name redacted] from who [name redacted] commissioned several series between 2017 and 2022.

This would include all documents and correspondence relating to the management of this potential conflict of interests."

4. On 19 March 2024 Channel 4 responded to the request. It explained that the Act does not apply to Channel 4 and is not required to make available information held for purposes of 'journalism, art or literature'. It said "the Act does not apply to information concerning, relating to, or closely associated with Channel 4's output (e.g. any content on TV, film, online etc)." It emphasised that information related to its output is covered by the derogation (set out in Schedule I, Part VI of the Act) and it is not required to disclose such information to the public.

Reasons for decision

5. This reasoning covers why the information requested is excluded from FOIA as it was held for the purposes of 'journalism, art or literature'.
6. Schedule One, Part VI of FOIA provides that Channel 4 is a public authority for the purposes of FOIA but it only has to deal with requests for information in some circumstances. The entry relating to Channel 4 states:

"The Channel Four Television Corporation, in respect of information held for purposes other than those of journalism, art or literature."
7. This means that Channel 4 and other public service broadcasters such as the BBC have no obligation to comply with parts I to V of the Act where information is held for the purposes of journalism, art or literature. The Commissioner calls this situation "the derogation".
8. 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 following analysis focusses on the derogation.
9. In this case, Channel 4 is arguing that the requested information was held for the purpose of journalism. Channel 4 is a publicly owned broadcaster but it is commercially funded.
10. 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)¹.

¹ <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

11. 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).
12. 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. The Supreme Court's ruling would apply equally to Channel 4 as it does to the BBC.
13. 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 broadcaster 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.
14. If a sufficiently direct link is established between the purposes for which Channel 4 holds the information and any of the three derogated purposes – i.e. journalism, art or literature - it is not subject to FOIA.
15. 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.”

16. 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’.
17. The Supreme Court also explained that “journalism” primarily means “output on news and current affairs”, including sport, and that “journalism, art or literature” covers the whole of the broadcaster’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 broadcaster’s output and/or the broadcaster’s journalistic or creative activities involved in producing such output.
18. The Commissioner adopts a similar definition for the other elements of the derogation, in that it will catch information used in the production, editorial management and maintenance of standards of those art forms.

The complainant’s view

19. In this case, the complainant requested a copy of all documents and correspondence relating to the declaration of a potential conflict of interests. Also, to include information relating to the management of this potential conflict of interests. Channel 4 responded and explained that it was not required to disclose information held for the purposes of journalism, art or literature. It said the Act does not apply to information concerning, relating to, or closely associated with its output, e.g. any content on TV, film, online etc. Channel 4 directed the complainant to its website for further information about how FOIA applies to Channel 4.
20. The complainant stated to the Commissioner that the information requested relates to a conflict of interests arising for a senior member of Channel 4 staff. The individual in question [name redacted] worked for Channel 4 and commissioned multiple series from [name redacted] between 2017 and 2022. During that time their spouse was a member of the senior management at the same company – [name redacted]. The complainant believes that this is “an actual conflict of interests, particularly when looked at against C4’s Code of Conduct.” The complainant said his request is for “all information relating to how this conflict was declared, how Channel 4 ended up deciding it was not a conflict of interests...”.

21. The complainant considers that this matter has a high public interest. He said that although Channel 4 decided it was not a conflict of interests, he believes Channel 4 “still needed additional supervisory measures over the next 5 years to make sure [name redacted] actions did not benefit [their spouse].” The complainant stated his request is also for “what those measures were and any correspondence relating to that management process.” He refutes Channel 4’s position that the information is caught by the derogation, and referred to parts of Channel 4’s Code of Conduct in support of his argument.

The Commissioner’s view

22. Having considered the nature of the requested information and submissions made by broadcasters in previous cases, the Commissioner has found that the information falls within the third element of journalism referred to above – the maintenance and enhancement of the standards and quality of journalism.
23. In the Commissioner’s view, information about the impartiality and potential conflicts of interests of Channel 4 employees, clearly relates to the maintenance of standards and quality of journalism. The Commissioner notes the complainant’s concern about Channel 4’s monitoring and managing potential conflicts of interests. He also notes the complainant’s belief that it’s in the public interest to disclose what action was or was not taken in relation to the management process. However, the Commissioner is unable to consider these issues because, if the information is derogated, it is not subject to FOIA, and any arguments about the public interest are irrelevant.
24. The Commissioner is satisfied the information requested is derogated. Therefore, he has found that the request is for information held for the purposes of journalism and Channel 4 was not obliged to comply with Parts I to V of FOIA.

Right of appeal

25. 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

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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