

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

### **Decision notice**

**Date:** 12 May 2014

**Public Authority:** British Broadcasting Corporation

**Address:** White City  
Wood Lane  
London W12 7TP

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

---

1. The complainant has requested information about particular BBC teams that had responded to a staff survey in 2012. The British Broadcasting Corporation ('the BBC') refused to disclose the information and cited the exemption under section 40(2) of the FOIA (third person personal data) as its basis for doing so.
2. The Commissioner's decision is that the BBC has incorrectly applied this exemption and requires the BBC to disclose to the complainant the information it withheld.
3. The BBC must take this step 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.
4. The Commissioner also found that the BBC failed to respond to the request within 20 working days, breaching section 10 of the FOIA.

## Request and response

---

5. On 6 May 2013, the complainant wrote to the BBC and requested information in the following terms:

*"I understand that the head of HR at the BBC, Lucy Adams, has requested the results for the 30 departments/teams with the worst results in the BBC's 2012 Staff Survey, so that the reasons may be investigated. Would you please identify the 30 departments/teams she was referring to, and say in which divisions they are located."*

6. The BBC failed to provide a response. On 13 September, the BBC carried out an internal review in which it acknowledged that it had not responded, but it did not go on to provide a response.
7. Following intervention from the Commissioner, the BBC finally responded on 18 November 2013. It disclosed some information within the scope of the request – the number of teams from relevant Divisions that made up the thirty lowest performing Workplace Pressure Index (WPI) scores as recorded in the 2012 staff survey. The Commissioner understands that this Index measures sources of pressure in the workplace that can lead to work related stress.
8. The BBC withheld the remainder of the information. It said that the names of specific teams was personal data and therefore exempt from disclosure under section 40(2).
9. Following an internal review the BBC wrote to the complainant on 18 February 2014, maintaining its original position that section 40(2) was engaged. It presented the following arguments:
- (i) On the basis of the conclusions in the *Durant*<sup>1</sup> case, the names of teams is personal data because it has putative individuals (the data subjects) as its focus, it is biographical and because it relates to individuals' professional life. These arguments are discussed further at paragraphs 22 – 24.

---

<sup>1</sup> [\[2003\] EWCA Civ 1746](#)

- (ii) It would be possible to identify specific individuals from the name of a BBC team or department when combining this with other information, for example the knowledge that a particular BBC employee works for specific team and the small number of employees in some of the teams in question. This argument is discussed further at paragraphs 25 – 26.
  - (iii) The staff survey was conducted in confidence, and many of those who responded are in junior positions. Respondents would therefore reasonably expect that the name of their team would not be disclosed.
  - (iv) Disclosing the information would undermine staff willingness to participate in similar surveys in the future.
  - (v) Individuals risk suffering damage or distress if their name was linked to one of the lowest performing WPI scores at the BBC.
10. The BBC reiterated these arguments during the Commissioner's investigation and added that the survey and its results were now somewhat out of date. The BBC told the Commissioner that work pressure reviews had subsequently been conducted with the relevant low scoring teams and their scores had improved.
11. The BBC said that, furthermore, the health and safety of individuals in two specific named teams (and their families) would be at particular risk if the requested information were to be disclosed as they had suffered harassment from authorities in the country in which they are based. The BBC argued that disclosing the requested information could result in further persecution for those teams.
12. The Commissioner notes that the BBC also presented public interest factors for disclosing the information, in its internal review and during his subsequent investigation.
13. As a compromise solution, the complainant had suggested that the BBC might disclose the information to a named National Union of Journalists (NUJ) Health and Safety Officer. The BBC was not comfortable with this suggestion because it had already shared the list of thirty team names on a confidential basis with the General Secretaries of the NUJ and the Broadcasting, Entertainment, Cinematograph and Theatre Union. It considered that sharing the information with this Officer would be unusual and outside the recognised process of consultation as agreed with the Unions.

## Scope of the case

---

14. The complainant contacted the Commissioner on 6 March 2014 to complain about the way their request for information had been handled.
15. The Commissioner has noted that the BBC breached section 10 of the FOIA because it failed to respond to the information request within 20 working days.
16. However, since it has now responded, he has focussed his investigation on the BBC's application of the exemption under section 40(2) of the Act.

## Reasons for decision

---

17. Section 40(2) of the FOIA says that information is exempt if it is the personal data of a third party (ie someone other than the requester) and disclosing it would breach any data protection principles.
18. The Commissioner therefore first considered whether the requested information is, as the BBC maintain, the personal data of a third party.
19. Personal data is defined in the Data Protection Act (DPA) as:  
*"data which relate to a living individual who can be identified –*  
*(a) from those data, or*  
*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."*
20. The information that has been requested is the name of 30 specific teams within the BBC, and the BBC has presented its arguments for why this is personal data at paragraph 9(i).
21. The Commissioner has not found these arguments compelling for the following reasons:

*Does the information 'relate to a living individual'?*

22. Information can be said to 'relate to' an individual 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.

23. Based on these criteria, it is difficult for the Commissioner to see how the name of a team could be said to be the personal data of particular individuals. Someone with a degree of prior knowledge about the BBC may know the names of particular individuals who work in particular teams. However, the name of a team alone is not 'about' any individual in it. Nor does it have any individuals as its main focus, or link directly to any specific individual.
24. The BBC has argued that the information is biographical because it relates to individuals' professional employment. Putting aside his opinion that the name of a team alone does not identify any particular individual in it, the Commissioner does not consider a team name meets the criteria of being biographically *significant* because, theoretically, it would not go beyond simply 'recording' an individual's involvement in it.

*Is the individual identifiable from the information?*

25. The information to be disclosed will not be classed as personal data if it is effectively anonymised and therefore the section 40(2) exemption will not apply. This approach was confirmed in the High Court judgment *Department of Health, R (on the application of) v Information Commissioner*<sup>2</sup>.
26. The Commissioner issued a Data Protection Code of Practice on anonymisation<sup>3</sup> in 2012 and he has drawn on it when making his decision in this case. He has applied the test of whether it is *reasonably likely* that an individual data subject can be identified – from the data and other information. He has also considered the 'motivated intruder' test detailed in pages 22 – 24 of the Code. Finally, the Commissioner has taken into account pages 24 – 25, which cover prior knowledge and re-identification.
27. The Commissioner accepts that the BBC needs to be cautious; given the remaining arguments it has given at paragraphs 9 – 11, and notes its concern for the safety of some of its teams based overseas, in particular.

---

<sup>2</sup> Department of Health, R (on the application of) v Information Commissioner [2011] EWHC 1430 (Admin) (20 April 2011)

<sup>3</sup> [Anonymisation: managing data protection risk code of practice \(ICO, 2012\)](#)

28. However, having considered the BBC's arguments, he does not find it reasonably likely that individual data subjects could be identified. This is because the complainant has requested only the team names, not the names of those who responded, the number of respondents within teams or the individual responses. The Commissioner is not convinced that it would therefore be possible to identify specific individuals from the requested information, or to form an opinion on who responded to the survey (even where a team has only a small number of individuals in it), or what any of the respondents' individual views were.
29. The 'motivated intruder' test involves considering whether someone without any prior knowledge would be able to achieve re-identification *if* motivated to attempt this. Such an individual might, for example, carry out a web search, search archives or use social networking in order to identify an individual from whose personal data, anonymised data has been derived.
30. In this case, the requested information – the names of teams – has not been anonymised, as such, and neither has this information been derived from others' personal data. The Commissioner is therefore not convinced that motivated intrusion using the requested information alone risks specific individuals being identified.
31. The Code acknowledges that the risk posed by making anonymised data available to those with particular personal knowledge cannot be ruled out. In this case, the complainant is also a BBC employee and so may have a degree of prior knowledge about the organisation. Despite this, and for the reasons given at paragraph 28, the Commissioner is not convinced that they – or any member of the public – would be able to identify specific individuals from the information that has been requested.
32. The Commissioner considers that the requested information - the names of the 30 teams/departments with the worst WPI scores in a BBC 2012 staff survey – is not personal data. He has not therefore gone on to consider whether disclosing it would breach any of the DPA's data protection principles.
33. The Commissioner has concluded that the BBC incorrectly applied section 40(2) to the request and requires the BBC to disclose the information.

## Right of appeal

---

34. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. 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**