

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2014

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant made a number of requests on the financial and safety arrangements at a BBC Radio 1 event. The BBC explained the information was covered by the derogation and excluded from FOIA. During the Commissioner’s investigation, the BBC provided some of the requested information.
2. The Commissioner’s decision is that the remaining information was held by the BBC for the purposes of ‘journalism, art or literature’ and did not fall inside FOIA. He therefore upholds the BBC’s position and requires no remedial steps to be taken in this case.

Background

3. BBC Radio 1’s Big Weekend is an annual event and in May 2014 took place in Glasgow. The musical festival was broadcast across BBC Radio 1 and 1Xtra, BBC Three TV, on the Radio 1 Big Weekend web and mobile sites, as well as via the red button from BBC Digital TV channels.
4. Over the years there have been a number of decision notices on this event, all upholding the derogation.

Request and response

5. The complainant wrote to the BBC on 28 June 2014 and asked for the following information regarding the BBC Radio 1 Big Weekend festival in Glasgow, 2014:

- 1. All risk assessments undertaken regarding the event*
- 2. The budget for the event.*
- 3. All contracts signed by/on behalf of the organisers in relation to the event.*
- 4. All licenses granted for this event.*
- 5. The stewarding, security and/or policing plans for this event.*
- 6. All information related to tendering for this event (requests for proposals and internal decision making documentation in particular)*
- 7. The official attendance figure for the event.*
- 8. A list of all contractors for the event.*
- 9. A list of all staff employed at the event for purposes other than direct entertainment services. So this would exclude presenters, DJs, etc. but would include managers, safety personnel, infrastructure, operations, etc. You may refer to them by initial and job role in order to meet your data protection obligations.*
- 10. The event management plan or equivalent.*
- 11. Who was the event commander from the BBC/organiser? Note this may be referred to by a different term but would be an individual from the organising team, NOT a senior police officer.'*

The full correspondence is on the website:

https://www.whatdotheyknow.com/request/radio_1_big_weekend_2)

6. The BBC responded on 2 July 2014. It explained that it believes that the information requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature.'
7. It explained that Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by FOIA if it is held for 'purposes other than those of journalism, art or literature'. It concluded that the BBC was not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities. It therefore would not provide any information in response to the request for information.

Scope of the case

8. On 11 July 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he challenged the operation of the derogation in this case.
9. He argued that the information is held for '*purposes of public safety, financial good conduct etc*'.
10. On 22 July 2014 the Commissioner wrote to the BBC to review their position and provide further arguments on the use of the derogation. Having revisited the request, the BBC released information on items 7 and 11 of the request. These items are therefore not considered within the scope of this decision.

Reasons for decision

11. 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."
12. 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*'.
13. 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.
14. 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)

15. 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.
16. 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.
17. 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.
18. 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."

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'.

19. 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.
20. The complainant's request for information about the Radio 1's Big weekend in Glasgow is well within the expected remit for the purposes of creating content and producing output. Creating and staging the music festival each year is with the intention to broadcast and form part of the BBC's output as well as a musical event for the public to attend. To this extent, much like any other concert-like programme, coverage of the event falls within the expectations of BBC creative output.
21. The Commissioner's view is that information about the costs (budget, tendering, staff and contractors) is connected to the BBC's editorial functions and decision making process. In addition, such information is valuable for informing editorial and budgetary decisions for future large scale events.
22. The decision notices for the case references [FS50404473](#) and [FS50352659](#) are relevant to this request as they also considered requests for information on costs during large public events. The refusal of the BBC to provide the information was upheld by the Commissioner as he was satisfied that it was held for journalistic purposes and therefore fell under the derogation.
23. As part of its submission to the Commissioner, the BBC referred to the Tribunal in *Stephen Gee QC v Information Commissioner* ((EA/2010/0042, 0121, 0123, 0124, 0125, 0187) which considered the types of information which may be held for the purposes of journalism in further detail, finding that:

'The Tribunal therefore entirely accepts the BBC's contention that "information which is held for the purposes of journalism" will necessarily apply to information held in connection with a wide range of activities undertaken by the BBC. Such information would

thereby include not only information which could be regarded as informing or sustaining a particular programme or series of programmes, but also information which might shape directly or indirectly or otherwise influence BBC editorial output with regard to existing or future programming projects. [42]

24. The BBC went on to explain the direct link between the purposes for which the information is held and the derogation in relation to each of the complainant's requests:

All risk assessments undertaken regarding the event (1)

'As the "owner" of the Radio 1 Big Weekend, the BBC must, as far as reasonably practicable, ensure the safety of everyone attending (and working at) the event. Accordingly, several risk assessments were carried out... The risk assessments are an important component in the overall planning and design of BBC Radio 1's Big Weekend because they influence the scale and nature of the activity that can safely take place on the site. The risk assessments therefore form part of the operational information which supports the production and creation of Radio 1's Big Weekend.'

'The direct link between 'operational information' and the BBC's output ... (was) addressed... in British Broadcasting Corporation v Information Commissioner [2009] EWHC 2348. In particular, at paragraph 87 where Irwin J concluded that, "It seems to me difficult to say that information held for 'operational' purposes is not held for the purposes of 'journalism, art or literature'."

The budget for the event (2)

'The BBC has a fixed resource (the licence fee) and resource allocation goes right to the heart of creative decision making. Accordingly, the budget for staging and broadcasting Radio 1's Big Weekend is intimately connected to the BBC's creative output.'

All contracts signed by/on behalf of the organisers in relation to the event (3)

'The contracts entered into by the BBC for the staging and broadcast of Radio 1's Big Weekend have an influence on the content and design of the festival, and reflect the ambitions and editorial decisions made by the organisers. As to be expected for the staging and broadcast of a music festival on this scale, the BBC negotiated contracts which cover everything from security and clean up, to the choice of venues and selection of artists who

performed at the event. The contracts are negotiated for the specific purpose of staging and broadcasting the event, and not for any purposes connected to the running and management of the BBC. ...(See decision notice FS50319445)... the contracts negotiated by the organisers of the event will be used to inform editorial decisions for future events, including Radio 1's Big Weekend.'

All licenses granted for this event (4)

'In order to stage Radio 1's Big Weekend each year, the BBC is required to obtain several licences...(Public Entertainment Licence, applications for all large structures, a liquor licence, and applications to close the park)... These licences were obtained to assist those involved in the staging of the 2014 event. The licences were not obtained for any purpose other than supporting the creation of the BBC's output.'

The stewarding, security and/or policing plans (5)

Similar to the reasons given above about why the 'risk assessments' are held for the purpose of supporting the creation of the BBC's output, these plans form part of the operational information that is used by the organisers of the event in order to ensure the safety of everyone attending and working at the event. The plans were produced for the sole purpose of supporting the production and creation of Radio 1's Big Weekend, and are not held for any other purpose.'

All information related to tendering for this event (6)

As above, any information held by the BBC related to tendering for this event is held for the specific purpose of creating Radio 1's Big Weekend. ...(See) Decision Notice FS50350144... "The Commissioner has therefore taken the view that the BBC continues to hold the requested information for the purposes of journalism. This is because the tender and commissioning information would serve to inform the editorial process and would be used by those involved in the delivering of future output."

A list of all contractors for the event (8)

'The list of contractors engaged by the BBC reflects an editorial decision made by the organisers of the event. For the same reasons given above about why the contracts are closely connected to the staging and broadcast of the event, the list of

contractors is held for the purpose of creating the BBC's output and will inform editorial decisions for future events.'

A list of all staff employed at the event for purposes other than direct entertainment services. (9)

'Members of staff will have been employed at Radio 1's Big Weekend for purposes other than 'direct entertainment services'. However, all of the individuals working at the event play a role in supporting the creation of the BBC's output. Individuals who have management responsibilities, safety personnel, and individuals who are involved in infrastructure or operations, support the production of an event which helps to fulfil the BBC's mission'

The event management plan or equivalent (10)

'The event management plan is intended to provide general information about Radio 1's Big Weekend and also to detail the management plans and actions of the organisers with regard to public and worker safety. Accordingly, the document has been created for the purpose of producing part of the BBC's output and will be used to inform editorial decisions for future events.'

25. The Commissioner has accepted on a number of occasions (such as in case reference [FS50314106](#)) that the BBC has a fixed resource in the Licence Fee and resource allocation goes right to the heart of creative decision making.
26. The Commissioner's view is that the information requested is intimately connected to the BBC's editorial functions in staging the event for broadcast and will be used to inform editorial decisions on the coverage of future events.
27. For all of the reasons above, the Commissioner is satisfied that the information requested is derogated. Therefore, the Commissioner has found that the request is for information held for the purposes of journalism and that the BBC was not obliged to comply with Parts I to V of FOIA.

Right of appeal

28. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. 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

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