

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2015

Public Authority: The British Broadcasting Corporation (BBC)

Address: Room BC2 B6, Broadcast Centre
White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information about the travel expenses of James Harding, the Director of News and Current Affairs from 1 January 2014 to the date of the request. The BBC refused to comply with the request under section 14 FOIA.
2. The Commissioner's decision is that the BBC has incorrectly applied section 14 FOIA to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The BBC should now respond to the request, either by disclosing the requested information or explaining why an exemption applies to prevent disclosure.
4. The public authority must take these steps 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.

Request and response

5. On 22 January 2015 the complainant requested information of the following description:

“Please note that I am only interested in information which relates to the period 1 January 2014 to the present day [22 January 2015].

I note that the Freedom of Information Act carries a presumption in favour of disclosure and that the Information Commissioner has called for the maximum possible degree of transparency when it comes to the matter of public expenditure.

I note that the BBC proactively makes available some basic information relating to staff expenses. I have checked the online information relating to Mr Harding via http://www.bbc.co.uk/corporate2/insidethebbc/managementstructure/biographies/harding_james but I note that most of the information I seek is missing from the disclosure.

There also appears to be a long time lag before the very specific information is release. I therefore do not think the BBC can justifiably cite section 22 in its reply.

I also note that the BBC has already collated much of the information for its own disclosure. So I do not think my request will pose any problems in terms of the time and financial constraints contained within the Freedom of Information Act.

1...During the aforementioned period can you please provide a full list of occasions when James Harding the Director of News and Current Affairs has travelled overseas as a representative and or employee of the BBC. Please include all trips which involved a cost to the BBC. In the case of each individual trip can you please provide a full itinerary which includes the dates of travel, the duration of the stay and all the specific destinations and organisations visited. Please do provide a reason for each visit?

2...In the case of each trip can you please provide a breakdown of all domestic and overseas transportation costs met by the BBC either at the time or in the form of a expense claim and or on a corporate credit/procurement card. These costs will include but will not be limited to the costs of external and internal helicopter/plane flights, train journeys, taxis and car hire.

3...In the case of each trip can you please provide details of the class and type of each railway ticket and or each plane ticket purchased by the BBC. These could have been purchased at the time or in the form of an expense claim. They could have also been purchased on a corporate credit or procurement card.

4...In the case of each trip can you please provide a full breakdown of all accommodation costs. These could have been met at the time of the

book and or paid for in the form of an expense claim. They could have been purchased on a corporate credit or procurement card.

5...In the case of each trip can you please identify all accommodation used by Mr Harding. Can you please provide the names of all hotels, bed and breakfast establishments as well as those firms which specialise in the provision of villa, apartment and chalet accommodation.

6...In the case of each trip can you please provide a list of all other BBC employees and or representatives who accompanied Mr Harding on the trip?

7...In the case of each trip can you please state whether the BBC contributed to the travel and accommodation costs of any member of Mr Harding's family who may have accompanied him on the trip. Can you please provide details for each individual trip including a full list of the costs met by the BBC,

8...In the case of each of the aforementioned trips can you please provide the overall cost to the BBC. This will include BBC expenditure on Mr Harding as well as anyone else who accompanied him on the trip.

9...In the case of each and every trip can you please provide copies of all expense claims and associated documents, bills and receipts submitted by Mr Harding.

6. On 19 February 2015 the BBC responded. It refused to comply with the request under section 14(1) FOIA. The complainant requested an internal review on 3 November 2014. The BBC sent the outcome of its internal review on 1 December 2014. It upheld its original position.
7. On 20 February 2015, the complainant requested an internal review. On 16 April 2015 the BBC provided the complaint with the internal review response. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 20 April 2015 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the BBC was correct to refuse to comply with the request under section 14 FOIA.

Background

10. Since 2009 the BBC has pro-actively published on a quarterly basis the expenses and central bookings (i.e. bookings, often for pre-booked transport, hotels etc, which are booked on behalf of the BBC through the central bookings system) for all senior managers who have a full-time equivalent salary of £150,000 or more or who sit on a major divisional board. The BBC also publishes the salaries, total remuneration, declaration of personal interests, and gift and hospitality register for these individuals.
11. It said that Mr James Holding, the BBC's Director of News and Current Affairs, is one of the individuals whose information is published.

Reasons for decision

Section 14

12. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
13. The term 'vexatious' is not defined in the Act but following guidance from the Upper Tribunal the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. It is important to recognise that in applying section 14 it is the request that must be considered rather than the person making the request. A public authority cannot simply refuse a new request on the basis that it has classified previous requests from the same individual as vexatious.
14. However in considering whether the current request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, the context and history in which the request was made can be a major factor in determining whether the request is likely to have such an impact. Therefore the Commissioner will consider relevance of other requests that the complainant has made together with his previous dealings with the BBC.

Frequent or overlapping requests

15. The BBC explained that to comply with this request will impose a significant burden on the BBC when it is considered in the round. It said that the number, breadth, pattern and duration of requests are all potentially part of the relevant context.

16. It said that the complainant has submitted a large number of requests to the BBC since 2005 and these requests cover a variety of topics, including 20 which related to senior management expenses.
17. In addition it explained that the ICO has recently investigated (and did not uphold) a complaint from the applicant in relation to expenses claimed by members of the BBC Executive Board. The decision notice for the request described above can be accessed using the following link:

https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1043161/fs_50560168.pdf

18. It said that according to its records, the complainant has submitted the following number of requests to the BBC:

Year	Requests submitted by the applicant to the BBC
2005	8
2006	22
2007	32
2008	24
2009	32
2010	13
2011	16
2012	11
2013	17
2014	11

19. Furthermore, according to its records the applicant has requested 42 internal reviews and made 40 complaints (including this one) to the ICO over the same period. This means that the applicant has complained to the Commissioner about more than 20% of the responses that he has received from the BBC over this 10 year period.

20. The Commissioner notes that in *Dransfield*¹ it was found that, the greater the number of previous requests that an individual has made to the public authority, the more likely it may be that a further request may properly be found to be vexatious. Of course the volume of requests alone will not determine whether a request is vexatious, however, the BBC believes that the large number of requests submitted by the complainant (and the large number of complaints about the BBC's responses) is relevant in this case because it demonstrates the considerable burden that the complainant's requests have placed on the BBC.
21. The BBC said that the breadth of this request is also a relevant consideration. It argued that the complainant appears to be hoping that by asking for information about Mr Harding's expenses for the period of a year, something noteworthy or otherwise useful will be caught by the request.
22. It explained that one of the ICO's indicators that it considers to be particularly relevant in this case is 'frequent or overlapping requests' when the requester "*sends in new requests before the public authority has had an opportunity to address their earlier enquiries*". It said that previously, on 10 September 2014, the complainant made a request about expenses and another unrelated request to the BBC. On the same day the complainant also received a response from the BBC in relation to an earlier request about senior management expenses, and was still waiting for a response to another request he had made. Before the applicant received a response to the request of 10 September 2014 which was about the Director-General's expenses, he also made three further requests to the BBC. The BBC stated that although these requests do not all relate to senior management expenses, the collective burden on staff time is significant, and it is in this context they consider that the current request is an improper use of FOIA.
23. The Commissioner considers that whilst the complainant has made a significant number of requests to the BBC since the inception of FOIA, this does not alone provide sufficient evidence to demonstrate that this request is vexatious. The BBC has highlighted that 20 of the requests relate to information about senior management expenses, and the ICO has recently issued a Decision Notice relating to a request made by the complainant relating to expenses in which the complaint was not upheld.

¹ *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC)

This was however a section 12 Decision Notice which is not relevant to this case. However the BBC has explained that it considers responding is likely to increase further requests being made as the BBC has provided the Commissioner with evidence of overlapping requests, some relating to expenses, prior to this request being made. Whilst the Commissioner accepts this does indicate that requests on this subject are creating a burden upon the BBC, because of the transient nature of expense claims it is not unexpected that a number of requests might be made on this subject area.

Burden on the public authority

24. The BBC went on to explain why requests about expense claims are particularly burdensome. It said that requests about expense claims are particularly difficult and time consuming for the BBC to handle because of the way in which expense claims are processed and the way in which the BBC records this information.
25. In terms of the processing of expense claims, it said receipts are filed in the order that they are submitted to the BBC, rather than by chronological order or by the individual who submitted the claim. Claims can also be submitted up to six months after the expense has been incurred, meaning that the information it holds is not in a systemised electronic filing system linked or indexed to a particular activity. In this case it said that it was not possible to electronically search Mr Harding's expenses using key words such as 'overseas trip'.
26. Consequently, it said in order to locate the requested information the BBC will often be required to manually examine each expense claim and receipt it holds. Before any receipts can be reviewed, they also need to be requested from the BBC's outsourced partner which provides finance and accounting services across the BBC. It said given the nature of the request, the expenses information would then have to be cross-referenced with information contained in Mr Harding's diary and matched with claims or bookings made by others.
27. It explained that requests for receipts necessarily involve the BBC spending a long time redacting exempt information (eg names of junior staff, home addresses and bank details) and this time cannot be taken into account when calculating the cost of compliance for the purposes of section 12. Furthermore, it said because expense claims are checked for accuracy prior to publication, disclosure in advance involves the duplication of work.
28. The Commissioner considers that because expense claims are not filed in chronological order or by the individual who submitted the claim, it will impose a burden upon the BBC to collate the required information

for individual expenses requests. Whilst the BBC has not applied section 12 FOIA, the burden of responding to this request is relevant when considering the application of section 14 FOIA. The BBC does regularly publish some of the information covered by the request, this includes the date on which an expense or booking was incurred, the amount of the expense, the amount reimbursed, the type of expense or booking (e.g. hotels, taxis, flights, rail, external hospitality etc.), the reason for the expense/booking being made and any notes such as the number of attendees. It does not however routinely publish itineraries, the class and type of ticket purchased, the names of other BBC employees or representatives who also attended, the overall cost to the BBC of each trip or copies of the actual expenses claims. Therefore responding to individual requests for expenses claims is likely to impose a significant burden upon the BBC, in addition to the work required to collate the expenses data it publishes quarterly. However as the information it regularly publishes only covers part of the information requested this would not be sufficient to respond to this request.

The value or serious purpose of the request

29. The BBC said that it considers the correct approach in assessing the value or serious purpose of this request is to only consider any wider public benefit in the release of the requested information over and above the public benefit in the disclosure that the BBC has already made (or will make in the future).
30. The BBC considers that its established approach to the publication of expenses data is proportionate and sensible because the BBC publishes what can objectively be considered of greatest benefit to the public in terms of promoting accountability and transparency. It also believes that its method of disclosing information is the safest and most practicable way of achieving the balance between giving the public information about individual expense claims and protecting senior managers from the unfair disclosure of their personal information.
31. The BBC explained that the information which is not routinely published is likely to contain a wide range of information which is exempt from disclosure. For example it said that claim forms typically include details such as where claims should be sent for processing, a reference number for the claim, the name of the person who authorised the expense, the charge code for the individual making the claim, the individual's staff ID and information about when the claim was submitted. It said that these details mean very little to anyone outside the BBC's finance department and would not meet any public interest.
32. It went on that information submitted together with the claim form, such as bills and receipts, will include exempt information such as billing

information, methods of payment and menu choices which it said does not meet any public interest.

33. The BBC also said that when the complainant requested an internal review he indicated that the request had been made as the complainant was interested in one particular trip taken by Mr Harding. The BBC said that only one part of the nine part request related to this particular trip. It therefore considers much of the request was a 'fishing exercise' and therefore has limited serious purpose or value.
34. The Commissioner rejects the argument that there is no serious purpose or value in disclosure of the further information, over and above what the BBC regularly publishes quarterly. The fact that some of the information may be exempt under FOIA exemptions does not mean that the request is vexatious. Furthermore the fact that the complainant provided an example of one of the trips he was interested in, does not necessarily diminish the serious purpose or value behind the other parts of the request.
35. The BBC reiterated that it considers that the majority of the requested information (that is not already in the public domain or scheduled for publication) is of limited value and to respond to this request will also impose a significant burden on the BBC and therefore it believes that disclosure would not justify the impact on the BBC.
36. The Commissioner considers that the complainant has made a significant number of requests to the BBC and several have related to expenses. However due to the transient nature of expenses claims this would not be unreasonable. The Commissioner also notes that the complainant is a journalist, who will often write stories related to the media and the BBC and the requests should be seen in this context. The Commissioner also considers there is a serious purpose or value in disclosure of further information, over and above what is regularly published by the BBC, and has balanced this against the burden it would create to respond. The Commissioner has concluded that whilst the BBC has supplied some evidence of the burden of the request and the impact of other request that may follow, the evidence does not convincingly explain how this burden would be oppressive and to a level that what would make the requests unjustified. On balance the Commissioner considers that whilst the BBC has made some relevant arguments to support its application of section, the submissions are not sufficient in this case to conclude that this request was vexatious.
37. The Commissioner therefore considers that section 14 FOIA was incorrectly applied in this case.

Right of appeal

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

39. 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.
40. 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

Steve Wood
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