

'Not a Public Authority' -

Complaints to the ICO under the Freedom of Information Act 2000:

FS50091266 – Dudley Metropolitan Borough Council

FS50093415 – St Albans District Council

FS50109712 – Royal Mail Group plc

FS50110739 – London Borough of Barnet (Manor House Residential Home)

FS50148041 – House of Commons (Parliamentary Contributory Pension Fund)

FS50153573 – BBC

FS50122574 – Audit Commission

FS50165488 – BBC

FS50166595 – Home Office

FS50170138 – Healthcare Commission

FS50170835 – BBC

FS50172475 – BBC

FS50173182 – Department of Health (Ministers for Health & the Prime Minister)

FS50175878 – BBC

FS50178131 – HM Coroner (incorrectly recorded as HMCS) – no copy of original information request to HM Coroner supplied

FS50178465 – House of Commons (Parliamentary Contributory Pension Fund)

FS50180843 – AEA Technology

FS50187743 – BBC

FS50187834 – BBC

FS50190746 – BBC

FS50200455 – Liverpool City Council (closed as 'Not PA' in error – therefore no information provided)

FS50202284 – BBC

FS50202334 – HM Inspectorate of Court Administration (incorrectly recorded as HM Inspectorate of Constabulary)

FS50204097 – BBC

FS50206514 – BBC

Freedom of Information Coordinator
Dudley Metropolitan Borough Council
Council House
Priority Road
Dudley
West Midlands
DY1 1HF

Our Ref: [REDACTED]
Your Ref:
Date: 15 August 2005

Dear Sirs

Local Land Charges – Personal Searches

1. We would be obliged for all information Dudley Council has received in respect of personal searches of local land charges departments.
2. One of our interests is an e-mail sent by [REDACTED] of Peterborough Council of 09 March 2004, the third paragraph of which reads "I think it is crucial now that we respond collectively on these issues, rather than seeking our own separate independent legal advice. To that end, I have today written separately to John Polychronakis, the President of ACSEs, for his support and understand the North West Group of ACSEs have already instructed Eversheds for advice on this matter.
3. We wish to learn, in addition, all matters that arose from the correspondence referred to above.
4. Thank you for your help in this matter.

Yours faithfully

[REDACTED]



15th March 2006

Reference: FAC0091266

Dear 

I am writing regarding your complaint against Dudley Metropolitan Borough Council under the Freedom of Information Act 2000 ("the Act"). The complaint relates to a request for information made to the Council on 15 August 2005.

From the correspondence you have provided it would appear that there are no grounds to suggest that Dudley MBC have breached the Act through their handling of your request. This is because the information you requested was held, for the purposes of the Act, by the Association of Council Secretaries and Solicitors and not by Dudley MBC. The Association of Council Secretaries and Solicitors (ACSeS) is not a public authority under the Act.

I appreciate your concern that the emails, referred to in your correspondence, were received by Mr Polychronakis at his work email address and during work time. However, I am afraid that this is not grounds for disclosure. Whilst the information you requested may have been in the possession of Dudley MBC, i.e. it was received on their email addresses, stored on their computers or delivered to their premises this simply means that the Information was in their possession. They do not hold the information for the purposes of the Act. From the correspondence you have provided it has not been demonstrated that this information was created by or received by Mr Polychronakis in the course of his duties with Dudley MBC. Instead we must assume that this information was held by Mr Polychronakis in his capacity as president of the ACSeS, especially since the email to which you refer in your request explicitly states that a letter was written to "John Polychronakis, the president of ACSeS."

I realise that the issue of who holds information for the purposes of the Act is a complex issue, especially in situations such as this, however the Information

Commissioner has already outlined his view on this issue in the paper "Awareness Guidance No 12 – When is Information Caught by the Freedom of Information Act?" I have enclosed a copy of this paper for your reference and I trust that you will find it useful. In particular I would draw your attention to the section on "Trade Union Communications". Whilst I fully appreciate that ACSeS as a professional body is not a Trade Union, the principles for deciding when information is held by a public authority are broadly the same.

Since Dudley MBC have explained that they do not hold the information you requested, for the reasons outlined above, I am unable to progress your complaint any further and it is for this reason that I am now closing your case.

Yours sincerely

Paul Warbrick
Assistant Complaints Resolution Officer







18th April 2006


Reference: FS50093415



Dear 

I am writing regarding your complaint against St Albans District Council and the St Albans and Harpenden Pubwatch schemes under the Freedom of Information Act 2000 ("the Act").

On 23 May 2005 you wrote to St Albans District Council to request information on the current address of . On 27 June 2005 you wrote to the Council to again request this information and to request information related to 

 The Council responded to your requests by refusing to either confirm or deny that it held information on the current address of  and by refusing to disclose this information under section 40 of the Act. It also stated that it was unable to provide you with information in response to your second request as this was information that it did not hold. The Council did however provide you with the contact details of these two Pubwatch schemes.

The Freedom of Information Act provides for a general right of access to information held by public authorities. It does not however provide for access to the personal information of third parties, i.e. information about someone other than the person making the request. This is exempt information under section 40 of the Act. I am satisfied that your request for information on the current address of  would constitute personal information and that the Council were correct to refuse to disclose this to you.


The St Albans and Harpenden Pubwatch schemes are separate organisations from St Albans District Council and therefore I am satisfied with the Council's assurances that it does not hold information related to .  understand that you have also not received this information from these Pubwatch schemes either. Unfortunately the St Albans and Harpenden Pubwatch schemes are not public

authorities for the purposes of the Act and therefore are not obliged to provide you with the information you require, under this legislation. Whilst I appreciate that the Council provided you with the contact details for the two Pubwatch chairmen it was actually not obliged to do this under the Act.

Given that St Albans District Council does not appear to have breached the Act through its handling of your request and given that the St Albans and Harpenden Pubwatch schemes are not Public Authorities; I am afraid that there is no action that I can take to progress your complaint further. It is for this reason that I must now close your case.




Yours sincerely

Paul Warbrick
Assistant Complaints Resolution Officer


Accident Management Unit
Northwest Midlands Mail Centre
Sun Street
Wolverhampton
WV1 18A
RECORDED DELIVERY

19 September 2005

Dear Sirs


We act on behalf of the above named who sustained an injury during the course of his employment at Royal Mail 


We would be grateful if you would forward to us any accident book entries, subsequent accident forms and investigation reports in respect of incidents involving the temporary portacabins at the above address.

We would also be grateful if you would forward any detailed memos, circulars or minutes of meetings relating to the aforementioned portacabins.

We look forward to hearing from you in early course.

Yours faithfully





27th March 2006

Reference: FS50109712

Dear Sir/Madam

Information request to Royal Mail.

We write with reference to the complaint you have submitted about Royal Mail's compliance with the Freedom of Information Act 2000 (The "Act").

This Act places duties on public authorities to respond to requests for information. The definition of 'public authority' is given in section 3 of the Act. At present, the above company is not a public authority as defined by the Act and, therefore, does not have a duty to respond to information requests. For this reason the Information Commissioner is unable to proceed with your complaint and we have therefore **closed your case**.

If you would like more information about the bodies subject to the Act you should contact the Department for Constitutional Affairs, who are responsible for this aspect of the legislation. You can write to them at:

Information Rights Division
Department for Constitutional Affairs
6th Floor
Selborne House
54 Victoria Street
London
SW1H 6QW

A list of public authorities can also be found on the DCA website at www.foi.gov.uk/coverage.htm

I hope this is helpful.

Yours sincerely
Customer Service Team
The Information Commissioner's Office



1st June 2006

Reference: FS50109712

Your Reference 

Dear Sir/Madam

Your information request to Royal Mail.

Thank you for your correspondence dated 26th May 2006 in which you complain about Royal Mail's failure to respond to your information request.

Having reviewed the complaint we note that our earlier letter had been sent out in error and that Royal Mail are subject to the Freedom of Information Act.

In cases such as this where the delay in responding is relatively minor, the Commissioner does not consider that serving a formal decision notice would serve any strong public interest. However, I have written to the public authority to provide them with a copy of your original request reminding it of its responsibilities and asking it to respond to you within 20 working days of receiving our letter. I enclose a copy for your information.

As you will see even though the Commissioner does not intend to issue a formal notice in this case, your concerns have been taken seriously. Thank you for bringing this matter to the attention of the Information Commissioner.

If Royal Mail respond and refuse to release the information you have asked for and you are dissatisfied, you may, after exhausting Royal Mail's internal complaints procedure, complain to us. Again, please be sure to quote the case reference number from the top of this letter.

This case has now been closed with the delayed response element showing as 'withdrawn' on our records. If you do not receive a response within 20 working days or are dissatisfied after having exhausted the internal review process mentioned above and would like us to look into the matter, please contact us quoting the reference number on this letter.

I have enclosed a fact sheet explaining our approach to handling complaints.
If you have any questions about this please contact our Helpline on 01625
545745

Yours sincerely

FoI Case Reception Unit
The Information Commissioner's Office

Sunday 24th April 2005

The Manager
Manor House Residential Home
25-28 Golders Green Crescent
NW11

Dear Sir or Madam

The late [REDACTED] a former Resident [REDACTED]

From your records please advise me as below:

1. The date of his discharge from [REDACTED]
2. The date of his admission to this address
3. The date of his admission to the [REDACTED]
- 4a. The date of his death
- 4b. The address where he died (if different from above)
- 4c. The medical causes of his death (if you know them)
5. The name and address of the informant as to his death
- 6a. The date of his funeral
- 6b. Whether buried or cremated
- 6c. The address where it was held
- 6d. The name and address of the undertakers

Yours faithfully

[REDACTED]



25th April 2006

Reference: FS50110739

Dear 

**Freedom of Information Act 2000
Information request addressed to the Manor House Residential Home**

I am writing with reference to the complaint you have submitted about the London Borough of Barnet's compliance with the Freedom of Information Act 2000 (The "Act").

It appears that the complaint you made to the Local Government Ombudsman (LGO) was then forwarded to Barnet, Enfield and Haringey NHS Trust who, in turn, refused your request. The correspondence you have forwarded in response to my letter of 3rd April 2006 indicates that your request for information was not actually made to the London Borough of Barnet, or to the NHS Trust, but was made directly to the Manor Residential Home.

I should clarify at this stage that for a request for information to constitute a valid request in terms of the Act, that request has to be made to a *public authority*. The definition of 'public authority' is given in section 3 of the Act.

The Act places a duty on public authorities to respond to requests for information but this duty does not generally extend to privately run organisations. I understand that the Manor House Residential Home is a privately run care home and therefore does not constitute a public authority as defined by the Act. This means that the Manor House Residential Home has no duty under the Act to respond to information requests. The Information Commissioner's Office is consequently unable to proceed with your complaint and we have therefore closed your case.

If you still wish to pursue your request for information, I suggest you make a new request directly to the public authority likely to hold the information you are seeking. From the correspondence you have forwarded, it appears that the appropriate public authority is Barnet, Enfield and Haringey NHS Trust.

If you have already made a separate request to the Trust, and can forward evidence of this, we will then be in a position to consider your complaint.

I enclose a copy of our leaflet "Freedom of Information: Your Right to Know" which you may find helpful.

Yours sincerely

H Langdon
Case Reception Unit
The Information Commissioner's Office

15/8/2006.

Dear Sir,

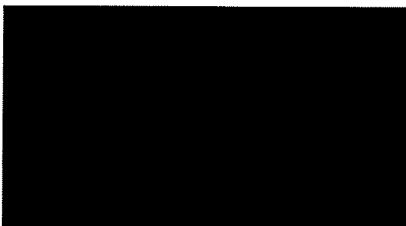
Application for information under the Freedom of Information Act.

Under the provisions of the above Act, I shall be obliged if you will provide me with the documents requested below and answer the questions asked concerning the administration of the Parliamentary Contributory Pension Fund,(PCPF), and the incorrect payment of the Guaranteed Minimum Pension(GMP)to certain Members.

1. A copy of the original instructions from the Department of Social Security and instructing the PCPF to pay a GMP to then serving members of the PCPF and any subsequent advice written or oral received from the Department.
2. The date when the PCPF first became aware that a possible incorrect payment of the GMP to serving Members of the House of Commons had been made?
3. The date when the Trustees or the staff of the PCPF were first informed of the possible overpayment of the GMP to Serving Members?
4. The date when Members receiving or former Members who had received GMP were first informed of possibility that the payments were wrongfully paid?
5. The reason why, when the PCPF received the information, Members receiving GMP were not immediately informed of the possibility that they were being incorrectly paid and were not given the opportunity to defer any future payments until the legal position had been clarified?
6. Copies of any notes of conversations, memoranda or position papers supplied to the Trustees of the PCPF or any of its officers concerning the incorrect payment of GMP to members, options considered and decisions made.
7. Copies of any correspondence sent to or received from the Leader of the House or minutes on notes of meetings held with him, concerning the overpayment of GMP to Members.
8. Copies of any correspondence the Trustees have had, or all any notes of any meetings it is how had with the Association of Former Members of Parliament concerning the incorrect payment of GMP and indicate any plans the Trustees may have to meet the officers or representatives of the Association before reaching any conclusions of how to resolve problems arising from the incorrect payment of GMP and other issues.
9. What is the number of Members who received GMP, whom the Trustees consider were incorrectly paid, the total sum involved and tabulate the number of payments (a) below £200, and (b) in bands of £500 to the highest payment, additionally indicating the sum paid after the PCPF first became aware that GMP was wrongfully being paid to Members?
10. Why, when the then manager of the PCPF met Members, who were in receipt of a GMP and retiring at the end of the last Parliament, to discuss their pension options, she made no mention of possible future demands to be made upon Members because of their receiving incorrect GMP payments?

Yours sincerely,

The Freedom of Information Officer,
Pensions Unit
Dept. of Finance and Administration,
House of Commons,
London, SW1A 0AA.



7th November 2007

Case Reference Number FS50148041

Dear 

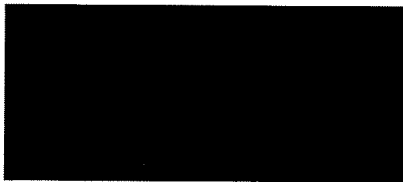
I am writing to you further to your previous correspondence and our telephone conversation.

As discussed we received from the Parliamentary Contributory Pension Fund (PCPF) a copy of the Consolidated Regulations under which it operates. The Commissioner has reviewed these regulations and found that the Fund is a separate legal entity from the House of Commons and that this entity is not covered by the Freedom of Information Act 2000 (the Act). The Fund and its Trustees operates independently from the House of Commons and although the Fund is administered by House of Commons staff, when they are engaged in the administration of the Fund they are effectively working for the PCPF which pays for their services. Therefore, although they may hold relevant information they hold it as representatives of the PCPF and not as part of the House of Commons.

The PCPF is therefore not a public authority for the purposes of the Act. The Commissioner therefore has no powers to investigate the PCPFs handling of any information request. Your complaint with the Commissioner is therefore now closed.

Yours sincerely

Rachael Cragg
Senior Complaints Officer
Information Commissioner's Office



31st January 2008

Case Reference Number FS50153573

Dear 

I am writing in relation to your complaint about your information request to the BBC for copies of its daily audience logs.

Our role

Firstly, I should explain our powers in relation to the Freedom of Information Act ('the Act') where a public authority has relied on the Schedule 1 derogation ('the derogation').

In April 2007 the High Court heard an appeal of a decision made by the Information Tribunal in the case of *Sugar v the Information Commissioner*. (This case involved an information request Mr Sugar had submitted to the BBC.) The reasoning for Mr Justice Davis' ruling was handed down on 27 April 2007 and in his reasoning Mr Justice Davis indicated that the approach initially taken by the Information Commissioner was the correct one. Basically, the Commissioner's initial position had been that he was unable to issue a formal decision notice under section 50 of the Act when he concluded that the information requested fell within the scope of the derogation.

A practical consequence of Mr Justice Davis' decision is that the Commissioner does not have jurisdiction to make a decision under section 50 of the Act where the derogation applies.

In this case we agree with the BBC that the requested information is held for the purposes of journalism, art or literature; the rationale behind this conclusion is outlined over the remainder of this letter.

The request

On 6 February 2007 you submitted the following request to the BBC:

'Under FOIA, I now require you publish a copy of your daily audience log for the period 1/4/2005 to present'.

The BBC informed you on 7 February 2007 that:

'Your request falls outside the scope of the Act because the BBC and other public service broadcasters are covered by the Act only in respect of information held for purposes "other than those of journalism, art or literature" (see Schedule I, Part VI of the Act). We are not therefore obliged 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. Information which is not subject to disclosure under the Act because of Schedule I might also be exempt from disclosure because of the application of other provisions of the Act, for example the exemption for third-party personal information.'

The BBC's view

The BBC has noted that Part VI of Schedule I of the Act provides that it is a public authority in respect of information held for the purposes other than those of journalism, art or literature. It is the BBC's position that unless the requested information is held for a dominant purpose other than journalism, art or literature it is not subject to the Act.

The requested information in this case consists of the daily audience logs held by the BBC for the period 1 April 2005 to 6 February 2005. These logs contain feedback, both positive and negative, the BBC receives about programmes it has broadcast. The information contained in the daily logs is compiled into internal reports and forwarded to the relevant programme makers, commissioning editors and senior managers.

It is the BBC's contention that with respect to your request for information it is not subject to the Act. This is because the BBC believes that both the content and analysis of feedback about programmes is excluded because this information is not held for purposes other than journalism, art or literature.

In support of this position the BBC have advanced the following arguments:

The BBC have argued that one of the main policy drivers behind the inclusion of the derogation was the creation of an editorial space in which public sector broadcasters could make programming decisions. They have noted that this analysis is broadly consistent with that of the Information Commissioner in his provisional decision notice in the case of *Sugar v Information Commissioner* which states that:

'the ultimate purpose of the derogation is to protect journalistic, artistic and literary integrity by carving out a creative and journalistic space for programme makers to produce programmes free from interference and scrutiny of the public'.

In the BBC's view an important part of the process of creating and improving its programmes involves reviewing feedback it receives, both positive and negative. In the BBC's opinion this is one of the main reasons that viewers and listeners continue to contact the BBC, i.e. to influence the content of future programmes. Whilst the BBC acknowledges that communications from the public are obviously not the only factors which influence future programming, they are a key element.

The BBC argue that if the content of individual comments were made available for wider scrutiny on a regular basis programme makers would be under increased pressure to respond to lobbies or vocal individuals. This could result in programme makers being reluctant to make changes to programmes in case they were accused of caving in to pressure from the public. Alternatively, if the judgement of programme makers was to ignore feedback because they believed it invalid or outweighed by more significant factors, they may be accused of ignoring public opinion. In either scenario the effect would be to limit the programme makers' ability to come to their own artistic judgement without public scrutiny.

The BBC has noted that the Information Commissioner's Counsel's skeleton arguments before the Information Tribunal in the case of *Sugar v Information Commissioner* commented on the importance of editorial freedom and in particular how this is enshrined in the European Convention of Human Rights:

'It is relevant to have regard to the legal principles concerning journalistic freedom. Article 10 of the convention provides protection for the right of free expression. The law accords importance to the freedom of the press (and other media)...The exclusion of the BBC from the status of a public authority, save where it holds information for purposes other than journalism (etc) can be seen in the context of Article 10, as allowing the BBC to produce programmes free from public scrutiny...There is thus an arena of activity which it is recognised should not be subject overview by the public. The BBC's ability to exercise free speech requires this area of freedom. The BBC needs to be able to exercise its own editorial judgement'.

Our view

Before considering the specific issues in this case, I feel that it is appropriate to confirm that Part VI of Schedule I of the Act states that the BBC is a public authority 'in respect of information held for purpose other than journalism, art

and literature'. This is commonly known as the Schedule 1 derogation. Similar provisions exist in relation to Channel 4 and S4C – as a group these organisations are called public sector broadcasters.

In order to determine the purpose for which information is held, we will apply a dominant purpose test. This means that where information is held for a number of purposes we will weigh these purposes against each other to determine the dominant purpose for which that information is held.

With regard to the information you requested, I am satisfied that the derogation applies for the following reasons:

The information you requested in this case was generated as a result of programme content and intended, presumably, to influence the future creation of the BBC's programmes. I accept the BBC's argument that it uses the feedback that it receives from the public, albeit along with a variety of with other factors, to determine what the content of future programmes will be.

For example, in May 2006 the BBC received a complaint from a listener of Radio Leicester about Bill Maynard's rant (a regular feature of the programme) which it was alleged had contained one sided political views. The BBC investigated this complaint and concluded that comments were strongly critical of the then Deputy Prime Minister and the Government and in the absence of any balancing element were not in keeping with the requirements of due impartiality. As a consequence of this complaint the 'rant' feature was dropped and editorial processes have been put in place to ensure that potentially contentious issues are identified and explored before transmission. (Source: http://www.bbc.co.uk/complaints/text/ecu_julsep2006.html)

Therefore, I believe that it is clear that the feedback the BBC holds about programmes it has broadcast has a direct relationship with previously broadcast content and the creation of future content.

The BBC as an organisation is obliged to consider complaints about its programme content. I have therefore considered whether feedback information received by the BBC, and in particular, the information covered by the scope of your request, could be said to be held for purposes other than that of influencing programme content.

(For reference, extensive information on the BBC's complaints processes is available online at <http://www.bbc.co.uk/complaints>.)

I accept that complaints information is held by senior BBC managers in order to shape the strategic direction of the organisation rather than to influence individual editorial decisions. At this high level complaints information could

be used to assess the BBC's success or otherwise in meeting its wider goals regarding content delivery, the needs of the license fee payers or to ensure that they are responsive as an organisation. This is reflected in several ways: regular reports are published which provide an overview of the complaints the BBC receives; complaints about editorial standards are handled by the Editorial Complaints Unit and outcomes are published online; finally, the outcomes of complaints about programme content can be escalated to the BBC Trust for consideration.

Therefore it is clear that the information contained in the daily audience logs has the capacity to serve a number of different purposes. However, fundamentally such information is about, and intended to influence, content. Despite other applications, the daily logs are intrinsically linked with the creative process of programme making and the core activity which the derogation was designed to protect.

Conclusions

On the basis of the above I have concluded that the information is not held for purposes other than journalism, art and literature. The consequence of the Commissioner agreeing with the BBC that the requested information is held for the purposes of journalism is that the Commissioner does not have jurisdiction to make a decision under Section 50 of the Act.

However, if you are unhappy with the outcome of my investigation you can ask for this decision to be reviewed by completing a Service and Quality Complaints Form, available on our website or by contacting us on 01625 545745. You also have the right to seek a judicial review of this decision; however, if you intend to do so you should seek independent legal advice.

Yours sincerely

Jonathan Slee
Senior Complaints Officer

[REDACTED]

16th January 2006.

[REDACTED]
District Auditor/Relationship Manager,
Audit Commission,
Aspinall House,
Horwich,
Bolton BL6 6QQ.

Dear [REDACTED] MANCHESTER CITY COUNCIL

I wish to refer to my letter dated 29th November and your acknowledgement of 30th November 2005.

I appreciate that the matters I have raised could only be 'the tip of an iceberg' and I would not wish to prejudice any on-going investigation.

However, the stage must have been reached when a definitive answer is at hand to the question in the final paragraph of my afore-mentioned letter, namely "Have these land sales been proper or not?"

I would also request to be informed of the clauses in the contracts of the sale of the subject land, which will be to-hand. I submit that myself, and other residents of the estate, have a right to this information, either as prospective buyers if the previous sales are proper, or adjacent owners if the sales have been improper. The latter alternative is particularly material because of the commonality of drainage on the estate in sub-groups, the consequences of which have been fully exposed in my case.

I look forward to your further understanding and I would be obliged if I could be provided with answers to the questions I have asked in the two previous paragraphs in the next fourteen days.

Yours sincerely,

[REDACTED]



26th June 2006

Reference: FS50122574

Dear 

Information request to The Audit Commission.

We write with reference to the complaint you have submitted about The Audit Commission's compliance with the Freedom of Information Act 2000 (The "Act").

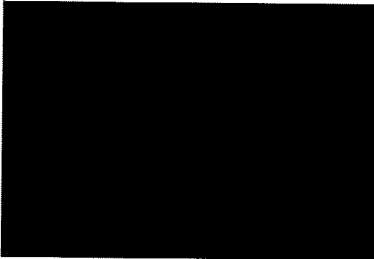
This Act places duties on public authorities to respond to requests for information. The definition of 'public authority' is given in section 3 of the Act. At present, the above is a public authority as defined by the Act; however, the auditors themselves are not covered by the act and as your request is to an auditor for information this is not covered by the act. I have enclosed a copy of our guidance for your attention. As such the Information Commissioner is unable to proceed with your complaint and we have therefore **closed your case**.

I note that you have made an information request to Manchester City Council for the same information. They are a public authority under the Freedom of Information Act 2000 and as such should comply with such requests.

If you would like further information, please call me on 01625 545788.

Yours sincerely

Kate Holl
FOI Case Reception Unit
The Information Commissioner's Office



3rd April 2008

Case Reference Number FS50165488

Dear 

I am writing with regard to the complainant you submitted to the Information Commissioner's Office (ICO) about the BBC's handling of your request for information.

Our role

Firstly, I should explain our powers in relation to the Freedom of Information Act ('the Act') where a public authority has relied on the Schedule 1 derogation.

In April 2007 the High Court heard an appeal of a decision made by the Information Tribunal in the case of *Sugar v the Information Commissioner*. (This case involved an information request Mr Sugar had submitted to the BBC.) The reasoning for Mr Justice Davis' ruling was handed down on 27 April 2007 and in his reasoning Mr Justice Davis indicated that the approach initially taken by the Information Commissioner was the correct one. Basically, the Commissioner's initial position had been that he was unable to issue a formal decision notice under section 50 of the Act when he concluded that the information requested fell within the scope of the derogation.

A practical consequence of Mr Justice Davis' decision is that the Commissioner does not have jurisdiction to make a decision under section 50 of the Act where the derogation applies.

In this case we agree with the BBC that the requested information is held for the purposes of journalism, art or literature; the rationale behind this conclusion is outlined over the remainder of this letter.

The Request

On the 17 May 2007 you wrote to the BBC requesting:

'the titles of any documents currently in use within the BBC (and provide copies) which provide general guidance to journalists, reporters, editors, producers and/or presenters on how coverage of the Royal Family, individual members of the Royal Family and/or the institution of the Monarchy is handled by the BBC?'

The BBC's refusal

On 2 May 2007 the BBC contacted you and informed you that the information you requested was not covered by the Act. The BBC explained that this was because:

'the BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes 'other than those of journalism, art or literature' [see Schedule 1, Part V1 of the Act]. We are not therefore obliged 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. Information which is not subject to disclosure under the Act because of Schedule 1 might otherwise be exempt from disclosure because of the application of other provisions of the Act.'

Our view

Before considering the specific issues in this case, I feel that it is appropriate to confirm that Part VI of Schedule I of the Act states that the BBC is a public authority 'in respect of information held for purpose other than journalism, art and literature'. This is commonly known as the Schedule 1 derogation. Similar provisions exist in relation to Channel 4 and S4C – as a group these organisations are called public sector broadcasters.

With regard to the information you requested, I am satisfied that the derogation applies for the following reasons:

In your letter of complaint to the ICO you argued that the derogation is designed to protect the material and research of journalists. However, in the ICO's opinion the purpose of the derogation is wider than simply protecting journalists; the derogation can also extend to information which supports or is closely related to the process of creating BBC programmes.

The information requested in this case essentially consists of editorial

guidance to BBC employees on how to cover issues relating to the Royal Family. Therefore, I believe that it is logical to conclude that the requested information is used to shape the nature of broadcast content. As your letter of complaint highlights, the BBC has to ensure that it broadcasts impartial and balanced coverage on all issues, including the Royal Family. In my opinion a key purpose of the requested information is to ensure that this impartiality is achieved and therefore the requested information is close related to, and supports the creative process of broadcasting and is therefore covered by the derogation.

I appreciate that in your letter of complaint you also argued that the disclosure of the requested information was in the public interest. The term 'public interest' is used in the Act in a technical sense to describe a consideration or 'test' which public authorities are required to perform when they are relying on a qualified exemption to refuse to disclose information. For example, section 43(2) allows public authorities to withhold information if they can (a) demonstrate that it would, or be likely to, prejudice any parties commercial interests, and (b) that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.

In the circumstances of your case the role of the Commissioner has been to decide whether the BBC is correct to rely on the Schedule 1 derogation – Basically does the request fall within the scope of the Act? In making this decision both the BBC and the Commissioner cannot take account of whether disclosure of the information would be in the public interest. Rather the test provided by the Act is simply one of deciding whether the information is held for the dominant purpose of journalism, art or literature. Any considerations as to whether disclosure would be in the public interest are irrelevant to the application of this test.

Conclusion

On the basis of the above I have concluded that the information is not held for purposes other than journalism, art and literature. The consequence of the Commissioner agreeing with the BBC that the requested information is held for the purposes of journalism, art or literature is that the Commissioner does not have jurisdiction to make a decision under Section 50 of the Act.

However, if you are unhappy with the outcome of my investigation you can ask for this decision to be reviewed by completing a Service and Quality Complaints Form, available on our website or by contacting us on 01625 545745. You also have the right to seek a judicial review of this decision; however, if you intend to do so you should seek independent legal advice.

Yours sincerely

Jonathan Slee
Senior Complaints Officer

do not pay cc
other items of i.
delivery instead



Home Office
Direct Communications Unit,
2 Marsham Street,
London,
SW1P 4DF.

21st April 2007

Sent 1st class recorded 'Special Delivery'

Dear Sir/Madam,

Re: Freedom of Information Act 2000
Security Service records related to suspected Nazi war Criminals

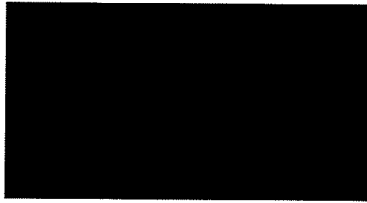


I now write to make an 'open government request' to receive records still kept by the security services related to Nazi war criminals including records given to agencies in the USA, such as the Office of Strategic Services, during and after the Second World War.

In particular, I am interested in MI 5 files (including 'PF' series), MI 6/SSI, MI 19 and UK Military Intelligence files that are not available at the Public Record Office in Kew some 62 years after the end of World War II.

In order to help you expedite my request, I have outlined the basis of the information that I seek as specifically as possible. If this request is too wide or unclear, please contact me as I understand that, under the Freedom of Information Act 2000, you are obliged to advise and assist people making requests under this Act.





16th July 2007

Case Reference Number FS50166595

Dear 

Your freedom of information complaint against the Home Office

I am writing further to the letter you received from this office dated 28 June. Your case has been allocated to me as the case officer responsible for considering your complaint.

I have noted your comments but I have to inform you that the Information Commissioner upholds the view taken by the Home Office with regard to your request. I shall set out below the reasoning behind this decision.

1. Under the Freedom of Information Act 2000 (the "Act") a public authority (this is defined in section 3 of the Act) is obliged only to disclose information it holds. The Home Office has stated that it does not hold the information requested. The Information Commissioner is satisfied that this is the case and I note that, in your letter dated 14 June, you do not dispute the Home Office's assertion. The Home Office has, however, helpfully suggested to you where the information, if it exists, might be held: namely by the security services.
2. In your letter dated 14 June you dispute the exemption of the security services from the Act. The Information Commissioner is subject to the provisions of the Act and hence may only investigate complaints made in respect of public authorities covered by the Act. Section 3 defines a "public authority" as a body which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5...

Schedule 1 of the Act lists public authorities covered by the Act and includes in them at section 1 "Any government department". The latter expression is further refined in section 84 of the Act, which states that it:

“does not include -....
(b) the Security Service..”

Therefore the Home Office was correct to state to you that the Security Services are exempt from the Act.

I am sorry to inform you that the Information Commissioner is unable to assist you further in relation to your complaint and that therefore your case has been closed.

Yours sincerely

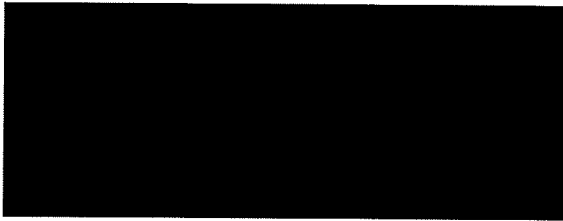
Mrs Vivienne Adams
Complaints Officer

[REDACTED]

I am surprised and disappointed at your decision not to reveal the identity of your expert. At our meeting you stated you would seek your experts' permission to release their names. Now you state you have decided not to pass this information onto OMA. In view of recent high profile medical cases where "expert testimony and opinions" have been found to be flawed OMA is unable to understand, and therefore accept, your reluctance to disclose such information as this would appear to contradict the Government's policy of openness and transparency in all matters.

Please accept this letter as a formal request under the Freedom of Information Act to release the names and the reports.

[REDACTED]



20 August 2007

Case Reference Number FS50170138

Dear 

Thank you for your letter dated 13 August 2007, and your previous letter dated 31 July 2007 to my colleague, Mr Paul Arnold.

In my previous letter to you dated 3 August 2007 I informed you that I had written to the Healthcare Commission (the "HCC") in order to establish whether it was correct in its statement that in relation to the information you had requested, it was not subject to the Freedom of Information Act 2000 (the "Act").

As I wrote in my previous letter, the Act only applies to organisations which fall under the definition of a public authority (as defined in the Act). In some cases certain organisations only fall under the Act in respect of some of their functions.

Examples of this are pharmacists, who are only subject to the Act in respect of information relating to the provision of pharmaceutical services under Part II of the National Health Service Act 1977; or the British Broadcasting Corporation, which is only subject to the Act in respect of information held for purposes other than those of journalism, art or literature.

In this instance the HCC is only subject to the Act, "in respect of information held for purposes other than those of its functions exercisable by virtue of paragraph 5(a)(i) of the Care Standards Act 2000."

The definition of how the HCC is subject to the Act can be viewed on the website of the Ministry of Justice, which maintains an up to date list of those organisations who are subject to the Act. This list can be found at <http://www.dca.gov.uk/foi/yourRights/publicauthorities.htm#schedule1>. Please note that the HCC is listed on this website under its legal name, the Commission for Healthcare Audit and Inspection.

Therefore, I have been seeking to establish whether the information you have requested is being held by the HCC solely for one of its functions under paragraph 5(a)(i) of the Care Standards Act 2000. If the information is held solely for one of these functions, the HCC is under no obligation to respond to your request under the Act.

Paragraph 5(a)(i) of the Care Standards Act 2000 states that for the purposes of that Act the HCC is the registration authority in relation to England for, "independent hospitals, independent clinics and independent medical agencies."

In this instance I believe that the information in question was commissioned by the HCC for the purposes of establishing whether it was going to take action against a group of independent slimming clinics who were not registered. I have spoken to the HCC and it has confirmed that this is so.

The HCC has confirmed to me that its actions in obtaining the expert report in question was done under Schedule 1, paragraph 3(1) of the Care Standards Act 2000. This states that the HCC, "may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions."

Having considered this we are satisfied that the information you have requested is held by the HCC solely for the exercise of its functions under paragraph 5(a)(i) of the Care Standards Act 2000. Therefore, in relation to the information you have requested, the HCC is not subject to the Act, and is not obliged to respond to your request.

As we have judged that in relation to the information you have requested, the HCC is not a public authority for the purposes of the Act, this case has now been closed. The Commissioner will not be issuing a Decision Notice on this case.

I understand that you may be disappointed by this. If you have any concerns regarding the outcome, or my handling of this case, you can contact my team leader, Pam Clements, at the address at the top of this letter. If you believe that the information in question is held by the HCC for purposes other than those in connection with the carrying out of its functions under paragraph 5(a)(i) of the Care Standards Act 2000, please provide this information and we will consider it further.

Ultimately, if you wish to challenge our findings on this case you will have to consider seeking a judicial review. However, I am unable to advise you any further regarding that, and if you wish to pursue this I recommend that you seek legal advice.

Yours sincerely

Christopher Hogan
Senior Complaints Officer



31st January 2008

Case Reference Number FS50170835

Dear 

I am writing in relation to your complaint about your information request to the BBC for a copy of its daily audience log.

Our role

Firstly, I should explain our powers in relation to the Freedom of Information Act ('the Act') where a public authority has relied on the Schedule 1 derogation ('the derogation').

In April 2007 the High Court heard an appeal of a decision made by the Information Tribunal in the case of *Sugar v the Information Commissioner*. (This case involved an information request Mr Sugar had submitted to the BBC.) The reasoning for Mr Justice Davis' ruling was handed down on 27 April 2007 and in his reasoning Mr Justice Davis indicated that the approach initially taken by the Information Commissioner was the correct one. Basically, the Commissioner's initial position had been that he was unable to issue a formal decision notice under section 50 of the Act when he concluded that the information requested fell within the scope of the derogation.

A practical consequence of Mr Justice Davis' decision is that the Commissioner does not have the jurisdiction to make a decision under section 50 of the Act where the derogation applies.

In this case we agree with the BBC that the requested information is held for the purposes of journalism, art or literature; the rationale behind this conclusion is outlined over the remainder of this letter.

The request

On 15 July 2007 you submitted the following request to the BBC:

'1. A copy of the latest 'Daily Audience Log' under the Freedom of Information Act.

2. Particularly, can you provide me with a sample copy of the audience log that, ' will be made available to the 'Live Earth' production team and Senior BBC Management', or the TYPE of audience log that will be made available to the team.'

The BBC informed you 16 July 2007 that information you requested was not covered by the Act. The BBC explained that this was because:

'the BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes "other than those of journalism, art or literature" (see Schedule 1, Part VI of the Act). We are not therefore obliged 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.'

The BBC's view

The BBC has noted that Part VI of Schedule 1 of the Act provides that it is only a public authority in respect of information held for the purposes other than those of journalism, art or literature. It is the BBC's position that unless the requested information is held for a dominant purpose other than journalism, art or literature it is not subject to the Act.

The requested information in this case consists of a number of daily audience logs held by the BBC. These logs contain feedback, both positive and negative, the BBC receives about programmes it has broadcast. The information contained in the daily logs is compiled into internal reports and forwarded to the relevant programme makers, commissioning editors and senior managers.

It is the BBC's contention that with respect to your request for information it is not subject to the Act. This is because the BBC believes that both the content and analysis of feedback about programmes is excluded because this information is not held for purposes other than journalism, art or literature.

In support of this position the BBC have advanced the following arguments:

The BBC have argued that one of the main policy drivers behind the inclusion of the derogation was the creation of an editorial space in which public sector broadcasters could make programming decisions. They have noted that this analysis is broadly consistent with that of the Information Commissioner is his

provisional decision notice in the case of *Sugar v Information Commissioner* which states that:

'the ultimate purpose of the derogation is to protect journalistic, artistic and literary integrity by carving out a creative and journalistic space for programme makers to produce programmes free from interference and scrutiny of the public.'

In the BBC's view an important part of the process of creating and improving its programmes involves reviewing feedback it receives, both positive and negative. In the BBC's opinion this is one of the main reasons that viewers and listeners continue to contact the BBC, i.e. to influence the content of future programmes. Whilst the BBC acknowledges that communications from the public are obviously not the only factors which influence future programming, they are a key element.

The BBC argue that if the content of individual comments were made available for wider scrutiny on a regular basis programme makers would be under increased pressure to respond to lobbies or vocal individuals. This could result in programme makers being reluctant to make changes to programmes in case they were accused of caving in to pressure from the public. Alternatively, if the judgement of programme makers was to ignore feedback because they believed it invalid or outweighed by more significant factors, they may be accused of ignoring public opinion. In either scenario the effect would be to limit the programme makers' ability to come to their own artistic judgement without public scrutiny.

The BBC has noted that the Information Commissioner's Counsel's skeleton arguments before the Information Tribunal in the case of *Sugar v Information Commissioner* commented on the importance of editorial freedom and in particular how this is enshrined in the European Convention of Human Rights:

'It is relevant to have regard to the legal principles concerning journalistic freedom. Article 10 of the convention provides protection for the right of free expression. The law accords importance to the freedom of the press (and other media)...The exclusion of the BBC from the status of a public authority, save where it holds information for purposes other than journalism (etc) can be seen in the context of Article 10, as allowing the BBC to produce programmes free from public scrutiny...There is thus an arena of activity which it is recognised should not be subject overview by the public. The BBC's ability to exercise free speech requires this area of freedom. The BBC needs to be able to exercise its own editorial judgement.'

Our view

Before considering the specific issues in this case, I feel that it is appropriate to confirm that Part VI of Schedule 1 of the Act states that the BBC is a public authority 'in respect of information held for purpose other than journalism, art and literature'. This is commonly known as the Schedule 1 derogation. Similar provisions exist in relation to Channel 4 and S4C – as a group these organisations are called public sector broadcasters.

In order to determine the purpose for which information is held, we will apply a dominant purpose test. This means that where information is held for a number of purposes we will weigh these purposes against each other to determine the dominant purpose for which that information is held.

With regard to the information you requested, I am satisfied that the derogation applies for the following reasons:

The information you requested in this case was generated as a result of programme content and intended, presumably, to influence the future creation of the BBC's programmes. I accept the BBC's argument that it uses the feedback that it receives from the public, albeit along with a variety of other factors, to determine what the content of future programmes will be.

For example, in May 2006 the BBC received a complaint from a listener of Radio Leicester about Bill Maynard's rant (a regular feature of the programme) which it was alleged had contained one sided political views. The BBC investigated this complaint and concluded that comments were strongly critical of the then Deputy Prime Minister and the Government and in the absence of any balancing element were not in keeping with the requirements of due impartiality. As a consequence of this complaint the 'rant' feature was dropped and editorial processes have been put in place to ensure that potentially contentious issues are identified and explored before transmission. (Source: http://www.bbc.co.uk/complaints/text/ecu_julsep2006.html)

Therefore, I believe that it is clear that the feedback the BBC holds about programmes it has broadcast has a direct relationship with previously broadcast content and the creation of future content.

The BBC as an organisation is obliged to consider complaints about its programme content. I have therefore considered whether feedback information received by the BBC, and in particular, the information covered by the scope of your request, could be said to be held for purposes other than that of influencing programme content.

(For reference, extensive information on the BBC's complaints processes is

available online at <http://www.bbc.co.uk/complaints>.)

I accept that complaints information is held by senior BBC managers in order to shape the strategic direction of the organisation rather than to influence individual editorial decisions. At this high level, complaints information could be used to assess the BBC's success or otherwise in meeting its wider goals regarding content delivery and the needs of the license fee payers or to ensure that they are responsive as an organisation. This is reflected in several ways: regular reports are published which provide an overview of the complaints the BBC receives; complaints about editorial standards are handled by the Editorial Complaints Unit and outcomes are published online; finally, the outcomes of complaints about programme content can be escalated to the BBC Trust for consideration.

Therefore it is clear that the information contained in the daily audience logs has the capacity to serve a number of different purposes. However, fundamentally such information is about, and intended to influence, content. Despite other applications, the daily logs are intrinsically linked with the creative process of programme making and the core activity which the derogation was designed to protect.

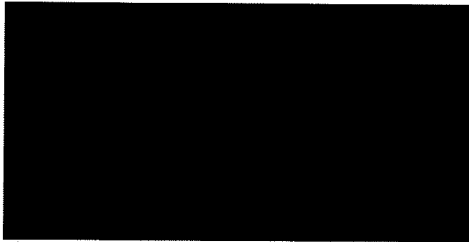
Conclusions

On the basis of the above I have concluded that the information is not held for purposes other than journalism, art and literature. The consequence of the Commissioner agreeing with the BBC that the requested information is held for the purposes of journalism, art or literature is that the Commissioner does not have jurisdiction to make a decision under Section 50 of the Act.

However, if you are unhappy with the outcome of my investigation you can ask for this decision to be reviewed by completing a Service and Quality Complaints Form, available on our website or by contacting us on 01625 545745. You also have the right to seek a judicial review of this decision; however, if you intend to do so you should seek independent legal advice.

Yours sincerely

Jonathan Slee
Senior Complaints Officer



3rd April 2008

Case Reference Number FS50172475

Dear 

I am writing with regard to the complainant you submitted to the Information Commissioner's Office (ICO) about the BBC's handling of your request for information.

Our role

Firstly, I should explain our powers in relation to the Freedom of Information Act ('the Act') where a public authority has relied on the Schedule 1 derogation.

In April 2007 the High Court heard an appeal of a decision made by the Information Tribunal in the case of *Sugar v the Information Commissioner*. (This case involved an information request Mr Sugar had submitted to the BBC.) The reasoning for Mr Justice Davis' ruling was handed down on 27 April 2007 and in his reasoning Mr Justice Davis indicated that the approach initially taken by the Information Commissioner was the correct one. Basically, the Commissioner's initial position had been that he was unable to issue a formal decision notice under section 50 of the Act when he concluded that the information requested fell within the scope of the derogation.

A practical consequence of Mr Justice Davis' decision is that the Commissioner does not have jurisdiction to make a decision under section 50 of the Act where the derogation applies.

In this case we agree with the BBC that the requested information is held for the purposes of journalism, art or literature; the rationale behind this conclusion is outlined over the remainder of this letter.

The Request

On the 5 June 2007 you submitted the following request to the BBC:

'Many radio and television programmes run live audience competitions for prizes. The winner is announced at the end of the programme.

Entries are invited by telephone, e mail or text.

What instructions are issued to producers to ensure that entries from three such diverse means have an equal chance of winning;

How are winners chosen?

Whose job is it in a studio to select a winner?

What procedures are in place to ensure producers abide by instructions to conduct selection of winning entries properly?

What verifiable guarantees can the BBC give that email entries, text entries and phone entries are put together to ensure an equal chance of winning'.

The BBC's refusal

On 3 July 2007 the BBC contacted you and informed you that the information you requested was not covered by the Act. The BBC explained that this was because:

'the BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes 'other than those of journalism, art or literature' [see Schedule 1, Part V1 of the Act]. We are not therefore obliged 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. Information which is not subject to disclosure under the Act because of Schedule 1 might otherwise be exempt from disclosure because of the application of other provisions of the Act.'

Our view

Before considering the specific issues in this case, I feel that it is appropriate to confirm that Part VI of Schedule I of the Act states that the BBC is a public authority 'in respect of information held for purpose other than journalism, art and literature'. This is commonly known as the Schedule 1 derogation. Similar provisions exist in relation to Channel 4 and S4C – as a group these organisations are called public sector broadcasters.

In order to determine the purpose for which information is held, we will apply a dominant purpose test. This means that in cases where the information is held for a number of purposes we will weigh these purposes against each other to determine the dominant purpose for which that information is held.

With regard to the information you requested, I am satisfied that the derogation applies for the following reasons:

The information you requested essentially consists of guidelines or instructions given to producers involved in BBC radio and television shows which include live audience competitions for prizes. It is my understanding that the requested information will therefore inform the process by which certain winners are chosen. Once a particular winner has been chosen, the fact they have won will be broadcast live on a show (or possibly announced on a future show) and therefore the fact that a particular person has won a competition forms part of the broadcast content produced by the BBC.

Therefore, I accept that the requested information has a direct connection to the creation of broadcast content (albeit that the selection of a particular winner is perhaps not as creative a decision as others taken in the process of programme making). Consequently, I am satisfied that one of the purposes for which the BBC holds the requested information is to help create and shape the nature of broadcast content and therefore the requested information is held for a creative purpose, and thus covered by the derogation.

I recognise that it could be argued that the BBC also holds the information for purposes other than those covered by the derogation. For example, the BBC could use the information to ensure that the voting process for its television and radio shows complied with guidelines laid down by Ofcom. This purpose could be particularly relevant in light the BBC's admission last year that a number of its programmes had breached editorial guidelines for such programmes.

However, even though the information you requested may have the capacity to serve a number of different purposes, I am of the opinion that the information is held for the dominant purpose of shaping broadcast content and the creative process of programme making, an activity which the derogation was designed to protect. Therefore, I have concluded that the BBC was correct to refuse to fulfil your request on the basis that the information you requested does not fall within the scope of the Act.

Based your letter of complaint to the ICO dated 23 July 2007, I understand that you also wish to complain about the BBC's decision to include links to various documents it considered relevant to your request. In relation to this point of complaint I should explain that the ICO's role in dealing with cases

