

Scope of the Act

Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for ‘purposes *other* than those of journalism, art or literature’. The BBC is 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.¹ The BBC considers that this includes information about the costs involved in creating its output, including fees paid to talent (for example actors and presenters).

Recent decisions of the Information Commissioner

The BBC notes two recent decision notices of the Information Commissioner (ref. FS50085710 and FS50067416), involving requests made for payments to BBC talent. In those cases the Commissioner considered that those payments did fall within the scope of the Act. However, the Commissioner decided that the information was exempt from disclosure under section 40(2) of the Act as he felt that the payment information constituted personal data and that its disclosure would breach the first data protection principle in the Data Protection Act, being ‘fair and lawful processing’. The Commissioner found that the payments made to these individuals did not relate to the performance of a public function which involves spending public money or taking influential policy decisions. The Commissioner considered that the individuals in that case had a reasonable expectation that their personal data would not be disclosed and it would therefore be unfair to do so. In contrast, the information disclosed about BBC senior managers relates to individuals who do have the types of responsibilities described above.

The BBC’s approach to this case

The BBC does not agree with the Commissioner’s decision on the scope of the Act and reserves its position on the matter; however, the BBC considers that in the event of a similar finding by the Commissioner in this case, the information you have requested would also be exempt under the Act under section 40(2) as the information constitutes personal data and disclosure would breach the First Principle (fair and lawful processing) for the reasons outlined above.

The Information Commissioner’s Office has published guidance on the disclosure of information about salaries here:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salaries_v1.pdf

Appeal Rights

If you are not satisfied with this response you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address above, explaining what you would like us to review and including your reference number. If you are not satisfied with the internal review, you can appeal to the Information Commissioner.

¹ For more information about how the Act applies to the BBC please see www.bbc.co.uk/foi. Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC. 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.

The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545 700 or see <http://www.ico.gov.uk/>

Yours sincerely

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