



Information Policy & Compliance

bbc.co.uk/foi

Mr Ridon

Via email at: request-8133-53d3101c@whatdotheyknow.com

13 March 2009

Dear Mr Ridon

Freedom of Information request – RFI20090324

Thank you for your request under the Freedom of Information Act 2000 (“the Act”) dated 14 February 2009. The reference number for your request is RFI20090324.

You requested a copy of the following information:

“Please release Michael Balen’s report into the BBC’s coverage of the Israeli-Palestinian conflict. Please also publish the amount spent on legal fees in keeping the report from the public”.

Request for a copy of the Balen Report

The BBC believes the information you requested is not covered by the Act and it is therefore under no obligation to disclose it.

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” (see Schedule 1, Part VI of the Act). Otherwise, the information constitutes what has been referred to as “excluded information” (see the speech of Lord Phillips in the House of Lords decision - *Sugar v BBC and another* [2009] UKHL 9, paragraph 7). The BBC considers that information which is held for the purposes of creating the BBC’s output or information that supports and is closely associated with these creative activities is information held for the purposes of journalism, art or literature. The BBC notes that the intention behind limiting the inclusion of the BBC (and other public service broadcasters) under the Act is to protect the independence of the media and to ensure that public service broadcasters are not disadvantaged as against commercial broadcasters.



The Balen Report is an internal review of programme content which is currently held to inform and support the BBC's coverage of the Middle East. As such, the BBC considers that it is clearly being held for the purposes of journalism and is therefore "excluded information" outside the scope of the Act.

The BBC has previously declined a number of requests for the Balen Report under the Act for the same reason. This is because the BBC believes that we have the right to protect our journalistic and editorial independence by maintaining a creative and journalistic space for programme-makers to produce material for broadcast free from external interference.

You may be aware that a previous decision not to disclose the Balen Report, further to a request by Mr Steven Sugar, under the Act was upheld by the Information Commissioner. This ruling was overturned after an appeal to the Information Tribunal. The BBC appealed to the High Court both in respect of the jurisdiction of the Information Tribunal and the substantive issue of whether the Balen Report was, at the relevant time, held for the purpose of journalism. The High Court ruled that the Information Tribunal did not have jurisdiction in the case. The Appeal Court, on an appeal from the requestor, agreed with that ruling. The House of Lords decision reversed that ruling on jurisdiction. However, contrary to some reports, the decision did not order the release of the report, rather it ordered that the issue of whether the report constituted "journalism, art or literature" at the relevant time should be remitted to the High Court. The BBC's outstanding appeal against the Information Tribunal's substantive decision is therefore currently pending before the High Court and further information regarding this appeal will be available in due course.

It is important to note that the BBC's decision to appeal, both in respect of the issue of the Tribunal's jurisdiction and its substantive decision, has nothing to do with the fact that the review is about the Middle East – the same approach would have been taken whatever area of news output was covered by the review.

Request for amount spent on Legal Fees

At the date of your request the BBC has spent £173,458 on legal fees further to the decision not to release the Balen report under the Act. This figure comprises counsels' fees and court fees in the matter brought by Mr Sugar and examined before the Information Tribunal, High Court, Court of Appeal and House of Lords as per the process outlined above.

This global figure includes counsels' fees and court fees of £72,743 spent by the BBC, not in pursuing appeals, but rather in defending appeals brought by Mr Sugar in the Court of Appeal and the House of Lords. As noted above, these hearings were not related to the content of the Balen Report, but rather served to clarify the jurisdiction of the Information Tribunal.

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.

The BBC makes a huge range of information available about our programmes and content on bbc.co.uk. We also proactively publish information covered by the Act on our publication scheme and regularly handle requests for information under the Act.

Appeal Rights

If you are not satisfied with the response regarding Legal Fees 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.

However, the BBC does not offer an internal review when it has concluded that the information requested is "excluded information". If you disagree with our decision in regards to your request for a copy of the Balen Report or if you are not satisfied with the internal review, you can complain to the Information Commissioner. Contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF telephone 01625 545 700. <http://www.ico.gov.uk>

Yours sincerely

James Leaton Gray

Head of BBC Information Policy and Compliance