



Information Rights

bbc.co.uk/foi bbc.co.uk/privacy

Mr Carr

Email: request-429274-94209e21@whatdotheyknow.com

21 September 2017

Dear Mr Carr

Freedom of Information request - RF120171335

Thank you for your request to the BBC on 5th September 2017 seeking the following information under the Freedom of Information Act (the Act):

“How many complaints of bias did the BBC receive in 2016 and how many were upheld?”

The Act covers information held by public authorities in England and Wales. It gives anyone, anywhere in the world the right to request recorded information from that public authority and the authority must confirm it holds the information and provide it to the request unless an exemption applies. However, and as you may know, there is a limited application of the Act for public service broadcasters to protect freedom of expression and the rights of the media under Article 10 of European Convention on Human Rights (“ECHR”).

The BBC, as a media organisation, is under a duty to impart information and ideas on all matters of public interest and the importance of this function has been recognised by the European Court of Human Rights. For example, maintaining editorial independence is a crucial factor in enabling the BBC to fulfil this function.

Therefore, the Act does not apply in the way it does to almost all public authorities in this respect and the Act recognises the different position of the BBC, as well as the other public service broadcasters that fall within the remit of the Act such as Channel 4, S4C and the Gaelic Media Service. There is therefore a derogation from the Act for the BBC in [Part VI \(Other Public Bodies and Offices: General\) of Schedule 1 \(Public Bodies\)](#) of the Act. This states that for the BBC and the other public service broadcasters only “*information held for purposes **other** than those of journalism, art or literature*” would be covered by the Act.

This means that, subject to any other legislation, for example, information in relation to the BBC policies and procedures such as our HR policy, the management structure of the BBC all fall within and are covered by the Act as they are not held for the purposes of journalism, art or literature but for the day to day corporate and financial management of the BBC.

This therefore means that means that the Act does **not** apply to material held for the purposes of creating the BBC's output (TV, radio, online etc), or material which supports and is closely associated with these creative activities. For example, this would include editorial decisions in terms of programming and scheduling. Output and creative activities would also include storylines and costs associated with specific programmes. Content and casting decisions would also fall under creative activities or those closely associated with supporting such activities.

The information you have requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature' and it relates to our editorial decision making. The BBC is, as outlined above, 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 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 activities¹, including information relating to the subject of editorial complaints. The BBC's independence and impartiality would be at risk through disclosure of information on editorial complaints, which is discussed in detail below.

The BBC has chosen not to volunteer information relating to the subject of editorial complaints for several very good reasons, chief amongst them being a desire to maintain our independence and impartiality. In this particular case, the BBC is concerned to preserve the integrity of the independent review process for editorial complaints.

The BBC, as a media organisation, is under a duty to impart information and ideas on all matters of public interest and the importance of this function has been recognised by the European Court of Human Rights. Maintaining our editorial independence is a crucial factor in enabling the media to fulfil this function.

The Information Commissioner's Office (The UK regulator of the Act) has recognised the importance of Schedule 1 of the Act in protecting the independence of the media, stating that:

"It is the Commissioner's view that the ultimate purpose of the derogation (Schedule 1) is to protect journalistic, artistic and literary integrity by carving out a creative and journalistic space for programme makers to produce programmes free from the interference and scrutiny of the public."

The BBC agrees that we have the right to protect our journalistic and editorial independence by maintaining just such a private space in which to produce our content. This extends to the sifting and review of praise and criticism from audiences, as well as the seeking of an independent view of criticism in order to undertake this review process. This is an important part of the BBC's process of creating and improving programmes. Despite

¹ For more information about how the Act applies to the BBC please see the enclosure which follows this letter. Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.

the BBC's obligation to be independent and impartial, many bodies, groups and individuals attempt to influence our output. This pressure takes many forms and has to be resisted by programme makers across the BBC.

If the content of individual criticisms were available for public scrutiny on a regular basis then programme makers would be under even greater pressure to respond to lobbies or vocal individuals than they are already. They might be reluctant to make changes that reflect the views in the complaints in that they could be accused of "caving in to pressure" and other viewers would make judgements about the apparent impartiality of the programme. Conversely, if their judgement was to ignore the complaints, as they believed them to be invalid or outweighed by other factors, they will be accused of ignoring public opinion, without the opportunity to explain the reasons for their editorial judgement. The BBC also believes that publication could lead to a tit-for-tat escalation of complaints, particularly from lobbying groups or political parties, as opponents competed with each other in terms of volume and strength of a complaint to the BBC.

I hope that this provides some understanding of why this is an important concern for the BBC.

In addition I can advise, outside the scope of the Act that the BBC proactively publishes public responses to recent issues of audience concern which have caused a significant number of complaints, or to any significant issue raised by complaints received. The BBC also publishes quarterly archived reports covering the main themes of all complaints received. Further information in relation to the complaints process is available [here](#).

However, the BBC does make a huge range of information available about our programmes and content on bbc.co.uk.

Appeal Rights

The BBC does not offer an internal review when the information requested is not covered by the Act. If you disagree with our decision, you have the right to appeal to the Information Commissioner's Office. The contact details are Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow SK9 5AF. Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) or visit their website at <https://ico.org.uk/>

Please note that should the Information Commissioner's Office decide that the Act does cover this information, exemptions under the Act might then apply which could prevent disclosure of your requested information.

Yours sincerely

Information Rights
BBC Legal

The BBC

The BBC's aim is to enrich people's lives with great programmes and services that inform, educate and entertain. It broadcasts radio and television programmes on analogue and digital services in the UK. It delivers interactive services across the web, television and mobile devices. The BBC's online service is one of Europe's most widely visited content sites. Around the world, international multimedia broadcaster [BBC World Service](#) delivers a wide range of language and regional services on radio, TV, online and via wireless handheld devices, together with [BBC World News](#), the commercially-funded international news and information television channel.

The BBC's remit as a public service broadcaster is defined in the [BBC Charter and Agreement](#). It is the responsibility of the [Ofcom](#) (the communications regulator in the UK) to regulate the content standards of the BBC's television, radio and on-demand programmes. They are also responsible to consider and monitor the effect of the BBC's services on fair and effective competition in the broadcasting market.

Day-to-day operations are run by the Director-General and the senior management team, the Executive Board. All BBC output in the UK is funded by an annual Licence Fee. This is determined and regularly reviewed by the UK Parliament. Each year, the BBC publishes an Annual Report & Accounts, and reports to Parliament on how it has delivered against its public service remit.

The Freedom of Information Act 2000

From January 2005 the Freedom of Information Act 2000 (the Act) gives a general right of access to all types of recorded information held by public authorities. The Act also sets out exemptions from that right and places a number of obligations on public authorities. The term "public authority" is defined in the Act; it includes all public bodies and government departments in the UK. The BBC, Channel 4, S4C and MG Alba are the only broadcasting organisations covered by the Act.

Application to the BBC

The BBC has a long tradition of making information available and accessible. It seeks to be open and accountable and already provides the public with a great deal of information about its activities. BBC Audience Services operates 24 hours a day, seven days a week handling telephone and written comments and queries, and the [BBC website](#), provides an extensive online information resource.

The Act does not apply to the BBC in the way it does to most of the other public authorities in one significant respect. It recognises the different position of the BBC by saying that it covers information "held for purposes **other** than those of journalism, art or literature".

This means that for the BBC, the Act does **not apply** to information held for the purposes of creating the BBC's output (TV, radio, online etc), or information that supports and is closely associated with these creative activities.

A great deal of information within this category is currently available from the BBC and will continue to be so. If this is the type of information you are looking for, you can check whether it is available on the BBC's website [bbc.co.uk](#) or contact BBC Audience Services.

However, the Act **does apply** to all of the other information we hold about the management and running of the BBC.