



Information Policy & Compliance

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

Dr Michael Sheill

Via email: request-135476-6973335d@whatdotheyknow.com

26 November 2012

Dear Dr Sheill,

Freedom of Information request – RFI20121173

Thank you for your request to the BBC of 26 October 2012 seeking the following information under the Freedom of Information Act 2000:

“How many programs have been made and broadcast about the history of cosmetic science development in the last year?”

The information you have requested is excluded from the Act because it is held for the purposes of ‘journalism, art or literature.’ The BBC is therefore not obliged to provide this information to you and will not be doing so on this occasion. 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

You may not be aware that one of the main policy drivers behind the limited application of the Act to public service broadcasters was to protect freedom of expression and the rights of the media under Article 10 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. Maintaining our editorial independence is a crucial factor in enabling the media to fulfil this function.

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.

A recent Supreme Court judgement has given a clear definition of what the phrase 'journalism, art or literature' means in the Act and what types of information it will cover; the Supreme Court found that, "...the composite expression "journalism, art or literature" seems to be intended to cover the whole of the BBC's output in its mission (under article 5 of its Royal Charter) to inform, educate and entertain the public. On that comprehensive approach the purposes of journalism, art or literature would be, quite simply, the purposes of the BBC's entire output to the public." [70]²

This means that, in cases where the requested information is directly related to the creation of the BBC's broadcasting output, it will fall outside the scope of the Act. It may be helpful to view the Information Commissioner's Decision Notice in respect of a very similar request, which asked for the number of times a particular organisation had been mentioned or featured in the BBC's output in a two year period. In that case, the BBC explained that it did not hold this type of information centrally and the only way it would be able to gather the information would be to research and review its creative content for the relevant timeframe. The Commissioner identified that the number of times the organisation had been featured in the BBC's was 'a component' of the content itself, and was therefore held for the same purposes. In finding that this information was held for the purposes of journalism, art and literature, the Information Commissioner agreed that the BBC's content is held so that its editors can analyse and review their programmes and to inform the planning process for future programming. The full Decision Notice is available on the link below:

http://www.ico.gov.uk/-/media/documents/decisionnotices/2011/fs_50397330.ashx

The information you have requested in the present case is similarly held for the purposes of journalism, art and literature, and is therefore excluded from the Act.

That said, 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

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 can appeal 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>

Please note that should the Information Commissioner's Office decide that the Act does cover this information, exemptions under the Act might then apply.

Yours sincerely,

² I have included below the link to the Supreme Court judgement, should you wish to read this in full:

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0145_Judgment.pdf

Claire Dresser
Chief Adviser, Vision

Freedom of Information

From January 2005 the Freedom of Information (FOI) Act 2000 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’s website bbc.co.uk provides an extensive online information resource.

It is important to bear this in mind when considering the Freedom of Information Act and how it applies to the BBC. The Act does not apply to the BBC in the way it does to most public authorities in one significant respect. It recognises the different position of the BBC (as well as Channel 4 and S4C) by saying that it covers information “held for purposes other than those of journalism, art or literature”. This means 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.

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

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 BBC Trust (the sovereign body within the BBC) to ensure that the organisation delivers against this remit by setting key objectives, approving strategy and policy, and monitoring and assessing performance. The Trustees also safeguard the BBC's independence and ensure the Corporation is accountable to its audiences and to Parliament.

Day-to-day operations are run by the Director-General and his 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 Parliament. Each year, the BBC publishes an Annual Report & Accounts, and reports to Parliament on how it has delivered against its public service remit.