



Information Policy & Compliance  
[bbc.co.uk/foi](http://bbc.co.uk/foi)      [bbc.co.uk/privacy](http://bbc.co.uk/privacy)

Mr Paul Davis  
Via email: [request-164358-ffd3f4dd@whatdotheyknow.com](mailto:request-164358-ffd3f4dd@whatdotheyknow.com)

5<sup>th</sup> July 2013

Dear Mr Davis,

**Freedom of Information request – RFI20130831**

Thank you for your request to the BBC of 11 June, under the Freedom of Information Act 2000 (“the Act”) seeking the following information:

*‘...details of all correspondence within BBC with regards to complaints against BBC Scotland for their depiction of Ally McCoist falling to his death in opening credits of Sportscene in September 2012.*

*Please also include full details of all correspondence sent to as an apology, verbal or written.’*

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.

On this occasion we would, however, note that complaints relating to the opening sequence of the Sportscene coverage (which did not depict Ally McCoist falling to his death, as you suggest) were considered, separately, by BBC Scotland, by the BBC’s independent Editorial Complaints Unit, by the BBC Trust and by the broadcast industry regulator, Ofcom. No complaint was upheld, by any of these bodies. The sequence in question drew on elements of the opening titles to a popular TV drama series and was intended to reflect the differing fortunes of the two teams taking part in that evening’s Scottish Communities League Cup game.

To further clarify, 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’. This 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.

The Information Commissioner’s Office 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.”

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]<sup>1</sup> This means that 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.<sup>2</sup>

In this case, you have requested information that relates to editorial complaints. Editorial complaints form part of the on-going review of the standards and quality of particular areas of programme making with a view to further enhancing these standards; the complaints themselves and the information associated with them plays a significant role in helping to inform editorial discussion and decisions going forward. In this way information relating to editorial complaints is used to inform future content and improve the quality of journalistic output; this is an important part of the BBC’s process of creating and improving programmes.

The Information Commissioner has issued a number of decisions supporting the BBC view that information relating to editorial complaints is held for the purposes of ‘journalism, art

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<sup>1</sup> [Sugar \(Deceased\) \(Represented by Fiona Paveley\) \(Appellant\) v British Broadcasting Corporation and another \(Respondents\) \[2012\] UKSC 4](#)

<sup>2</sup> 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.

or literature'. I have included links to three Decision Notices which specifically address information about the number of editorial complaints; the first deals with the number of complaints made to the BBC concerning political bias (FS50295017); the second concerns the number of complaints received about the World Cup 2010 programmes (FS50363611); the third case concerned the number of complaints made about editions of Panorama (FS50465338). In each of these cases, the Commissioner determined that information about editorial complaints was held for the purposes of journalism, art or literature as complaints information – including the numbers of complaints - is used to inform the BBC's editorial choices and direction, and remains held to inform future output. It was the Commissioner's view that the information held about the number of complaints is necessary to provide an overview of the editorial complaints and is created as part of the management and enhancement of the standards and quality of journalism. I have also included a link to a further Decision Notice which concerned information about the complaints handling procedures (FS50327965); once again the Commissioner determined that information about complaints procedures was used in the process to enable the enhancement of the standards and quality of journalism, and therefore had a direct relationship to the creation of the BBC's output. It is the view of the BBC that similar circumstances exist in the present case, and that the information you have requested is similarly held for the purposes of supporting the BBC's creative output.

FS50295017:

[http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS\\_50295017.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50295017.ashx)

FS50363611:

[http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50363611.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50363611.ashx)

FS50465338:

[http://www.ico.gov.uk/~media/documents/decisionnotices/2013/fs\\_50465338.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2013/fs_50465338.ashx)

FS50327965:

[http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs\\_50327965.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50327965.ashx)

EA/2010/0042, 0121, 0123, 0124, 0125, 0187:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i884/20121120\\_Judgment\\_EA20100042+5.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i884/20121120_Judgment_EA20100042+5.pdf)

While it remains the case that the information you have requested is not covered by the Freedom of Information Act, I can advise that outside the Act 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 in all complaints received.

From this link: <http://www.bbc.co.uk/complaints/reports.shtml> you will be able to access published information about complaints received by the BBC; both the “Monthly summaries of the main editorial complaints issues received by the BBC” and the “Half-yearly archive reports about complaints referred to the Editorial Complaints Unit” contain statistical information about the numbers of complaints received which you may find useful.

## **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,

**Ian Small**  
**Head of Public Policy & Corporate Affairs**  
**BBC Scotland**

## **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](http://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](http://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.