

Freedom of Information Internal Review decision

Internal Reviewer	Nicola Cain, Head of Legal – Freedom of Information & Contentious Data Protection
Reference	IR2015052 (RFI20150934)
Date	18 September 2015

Requested information

The requester made a request under the Freedom of Information Act 2000 ('the Act') to the BBC on 12 June 2015.

The requester sought the following information:

Please disclose whether you have records that the 1975 Panorama broadcast is archived and whether a copy has been disclosed to the Child Sexual Abuse Inquiry.

The BBC responded to the request on 30 June 2015 and informed the requester of the following:

The Dame Janet Smith Review was established in October 2012 by the BBC to conduct an impartial, thorough and independent review of the culture and practices of the BBC during the years that Jimmy Savile worked there. The Review will be publishing its findings in due course. Under section 22 of the Freedom of Information Act, information is exempt if the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not).

As section 22 is a qualified exemption, I am required under s2(2) of the Act to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information ahead of the planned schedule.

In favour of release we considered that there is generally a public interest in increasing the accountability and transparency of publicly-funded organisations. However, we do not consider that there is a particular public interest in the early release of this information.

The Metropolitan Police has told the Review that it is concerned that publication of the Report now could prejudice its ongoing investigations into sexual abuse.

Furthermore, it is in the public interest that this information should be disclosed to all licence-fee payers at the same time, rather than provided in advance to one individual.

I am therefore satisfied, in terms of section 2 of the Act, that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information ahead of schedule.

Issues on review

The requester wrote to the BBC on the same day that the BBC's response was provided and requested an internal review, which it was stated "*should involve Dame Janet SMITH*".

In so far as is relevant to this review under the Act, the requester also raised concerns about delays in the publication of the Dame Janet Smith report.

Decision

I apologise for the substantial delay in providing this internal review decision to the requester.

Dame Janet Smith is independent of the BBC and it would therefore not be appropriate to involve her in this internal review. Nor would this be in accordance with the Information Commissioner's guidance.

In relation to whether the BBC holds records as to whether a particular programme has been archived, I consider that such information is held for the purposes of journalism, art or literature and therefore the BBC is not obliged to disclose such information to the requester.

While I also consider that information and records about the publication of the BBC's output and other journalistic, artistic or literary material can be held for the purposes of journalism, art or literature, in relation to what information/evidence has been disclosed to and considered by the Dame Janet Smith Review team, I note that the Review team has confirmed on its website that "*the BBC has agreed to co-operate fully with the Review, for instance with regard to obtaining documents, encouraging witnesses to come forward and verifying information. In deciding what documentation and other information it requires, the Review is taking into account the need to fulfil its remit in a manner that is proportionate, fair and cost effective*"¹ and that "*Information and submissions will be used for the purposes of compiling Reports which will be made public by the BBC*"². Accordingly, I uphold the BBC's position that this part of the requested information is held with a view to future publication and the exemption provided by s22 of the Act is engaged. I also agree that the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

While not part of my review for the purposes of the Act, in relation to the requester's concerns regarding the delay in the publication of the Dame Janet Smith

¹ <http://www.damejanetsmithreview.com/faqs/>

² <http://www.damejanetsmithreview.com/witness-information/>

report, on 1 May 2015 the Review published an update on its website explaining the reason for the delay as follows³:

The Dame Janet Smith Review's Report is now finished.

However, the Metropolitan Police has told the Review that it is concerned that publication of the Report now could prejudice its ongoing investigations into sexual abuse. As a result, Dame Janet has taken the decision that publication of the Report (and its delivery to the BBC) should be delayed. The BBC is aware of, and accepts, this decision.

The decision to delay publication has been made reluctantly. Dame Janet recognises that a further delay will be of particular disappointment to victims of Jimmy Savile and Stuart Hall whose accounts are in the Report and other witnesses before the Review, to all of whom she is very grateful. However, it is important that the Metropolitan Police's investigations should not be prejudiced.

Publication will take place as soon as possible. As soon as a date for publication is known, an update will be provided.

A further update was published on 24 August 2015, which stated⁴:

The Review is aware of recent inaccurate press speculation in relation to its findings, the reasons for the delay to the Report and whether its Report has been delivered to the BBC.

As explained in the Review's update dated 1 May 2015 below, Dame Janet's Report is finished. However, in the Spring of this year, the Metropolitan Police informed the Review that it was concerned that publication of the Report could prejudice its ongoing investigations into sexual abuse. As a result, Dame Janet reluctantly took the decision that publication of the Report (and its delivery to the BBC) should be delayed. Dame Janet recognises that this continuing delay will be extremely disappointing to the victims of Jimmy Savile and Stuart Hall and other witnesses before the Review, to all of whom she remains very grateful. Publication will take place as soon as possible however it is important that the Metropolitan Police's investigations and any subsequent possible prosecutions should not be prejudiced.

In advance of publication of the Report, any comments about the Review's findings are premature and speculative and are not endorsed by the Review. Further, the Review confirms that the Report has not been provided to the BBC.

As soon as a date for publication is known, a further update will be provided.

³ <http://www.damejanetsmithreview.com/updates/>

⁴ <http://www.damejanetsmithreview.com/updates/>



Appeal Rights

If you are not satisfied with the outcome of your internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF; Telephone 01625 545 700 or www.ico.gov.uk