



Freedom of Information Internal Review decision

Internal Reviewer	Advisor – Legal Workplace and Information Rights
Reference	RFI20200887, RFI20200888 & RFI20200889 / IR2020037 & IR2020038
Date	7 September 2020

Requested information

On 1 July 2020, you requested that the BBC provide the following information across a number of requests under the Freedom of Information Act 2000 ('the Act'):

RFI20200887

- "1. How much has the Gates Foundation donated to the BBC in each of the last twenty years? Please give the original figures and the figures adjusted for inflation.*
- 2. Please provide details of all meetings between BBC employees and the Gates Foundation, or representatives of the Gates Foundation over the last twenty years .*
- 3. Please provide all emails between the Gates Foundation, or representatives of the Gates Foundation, and BBC employees over the last twenty years.*
- 4. Does the Gates Foundation have any editorial control over the BBC? If so please provide details.*

RFI20200888

- 1. How much has the George Soros (including George Soros's Open Society organisations) donated to the BBC in each of the last twenty years? Please give the original figures and the figures adjusted for inflation.*
- 2. Please provide details of all meetings between BBC employees and George Soros (including George Soros's Open Society organisations) over the last twenty years .*
- 3. Please provide all emails between George Soros (including George Soros's Open Society organisations) and BBC employees over the last twenty years.*
- 4. Does the George Soros (including George Soros's Open Society organisations) have any editorial control over the BBC? If so please provide details.*

RFI20200889

- 1. How much has the European Union donated to the BBC in each of the last twenty years? Please give the original figures and the figures adjusted for inflation.*
- 2. Please provide details of all meetings between BBC employees and the European Union over the last twenty years .*

3. Please provide all emails between the European Union and BBC employees over the last twenty years.

4. Does the European Union have any editorial control over the BBC? If so please provide details.

On 30 July 2020, the BBC provided a decision on your request, advising that it would exceed the appropriate time limit under section 12 of the FOI Act to respond to your request. The BBC said that:

“The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) state that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
- for the same or similar information; and*
- the subsequent request is received by the public authority within 60 working days of the previous request.*

We have therefore aggregated the above requests as one or more of these criteria have been met.

The Act does not require us to comply with a request if to do so would exceed the appropriate limit as set out in the Fees Regulations (SI 2004/3244). The appropriate limit has been set at £450 (equivalent to two and a half days work, at an hourly rate of £25). In order to respond in full to your request we estimate that to carry out this search would take BBC Staff more than two and a half days, owing to the wide timeframe covered by your request and the very large volume of information that would need to be collated. Therefore, under section 12 of the Act, we are refusing to handle the request as it would exceed the appropriate limit.

We are mindful of our duty under section 16 of the Act to provide reasonable advice and assistance to you, and specifically to advise how you might narrow your request so that it complies with the time limit.

In order to allow us to process your request, we would suggest narrowing the timeframe covered to only the past three years..”

On 9 August 2020, you sought internal review of the BBC’s decision, saying:

“There is no good reason why I should not be provided with this information.”

The issues for review

In the circumstances, this review will consider:

- whether the BBC was correct in aggregating the three requests for the purposes of section 12 of the FOI Act;
- if so, whether section 12 of the FOI Act is applicable on the basis that complying with the five requests would exceed the appropriate time limit

Decision

I consider that the BBC was correct in aggregating the three FOI requests. I also consider that the BBC was correct in finding that complying with your requests would exceed the appropriate time limit set out in section 12 of the FOI Act.

The relevant law and the reasons for my decision are set out below.

Analysis

Aggregation of the three requests

When a public authority is assessing whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions in regulation 5 of the *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004* (SI 2004/3244) ('the Fees Regulations') are satisfied. Relevantly, these conditions are:

- (1) the requests are made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- (2) the requests are made for the same or similar information; and
- (3) the requests are received by the public authority within any period of 60 consecutive working days.

In this case, all three requests were made by you on the same day. Therefore, conditions (1) and (3) are satisfied.

What is at issue is whether the requests can be considered as being 'for the same or similar information'.

The ICO's guidance relevantly provides that:

*"... requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."*¹

In this case, all three requests relate to whether the BBC was supplied with donations by the named individuals or organisations; had meetings with or corresponded via email with these; or whether they would have editorial control over the BBC's output.

In these circumstances, I consider that the BBC was correct in aggregative the three requests for the purposes of section 12 of the FOI Act.

¹ See page 13 of https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Appropriate time limit

Having found that the three requests can be aggregated, the next issue is whether complying with these requests would exceed the appropriate time limit.

Section 12 of the FOI Act allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate time limit to comply with the request. The appropriate limit for the BBC is defined in the Fees Regulations as £450 (equivalent to 18 hours work at an hourly rate of £25).

Regulation 4(3) of the Fees Regulations provides that a public authority can only take into account the costs it reasonably expects to incur in relation to:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.²

Reliance on section 12 of the FOI Act must be supported by a reasonable estimate of the time for compliance and other costs. The Information Tribunal has held that a reasonable estimate is one which is “...sensible, realistic and supported by cogent evidence”.³

Responding to your request under the FOI Act would require a search of many records, potentially held by different business areas within the BBC, over a significant period of time (i.e. 20 years). Given the very broad nature of your request, it is not possible to provide a meaningful breakdown of the time that would be required to process it. This is because over a 20 year period, determining whether information is held, and if so where in an organisation the size of the BBC, becomes increasingly difficult the further into the past the search is required to go. This difficulty is compounded because certain records, such as financial information, are often no longer centrally stored within the relevant department in an easily searchable manner after a specific period of time (for financial information this is 7 years). For records beyond this point, a search would necessitate an open-ended investigation into where, and indeed whether, the BBC held the requested information that is difficult to quantify.

In these circumstances, I am satisfied that processing the three requests would clearly be in excess of the appropriate time and cost limit for public authorities to respond to requests for information under section 12 of the FOI Act.

Other Matters

² See paragraph [9] of the ICO’s guidance on ‘Requests where the cost of compliance exceeds the appropriate limit’, accessed at https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

³ *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*, EA/2006/0004, 30 October 2007.

I note that the BBC's initial response explained that it would consider a new request if it is narrowed sufficiently to enable processing within the appropriate limit. By way of example, and in compliance with the BBC's obligations under section 16, the response provided an example of what a new, narrowed request may look like. This is subject to the application of any other exemptions that may apply to the information requested at a future date.

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 <https://ico.org.uk/>