

Freedom of Information
Internal Review decision

Internal Reviewer	Nicola Cain, Head of Legal – Freedom of Information & Contentious Data Protection
Reference	IR2015039 / RFI20150637
Date	05 June 2015

Requested information

On Sunday 19 April 2015, by email of 19:20, the requester made a request (subsequently designated RFI20150637 by the BBC), which was specified to be a request under the Freedom of Information Act 2000 ("FOIA"), via the 'What Do They Know' website. The relevant part of the request is as follows:

It looks like the BBC is well beyond the statutory time limit for responding to request RFI20142105.

I wonder if the BBC has any intention of answering this question? I want to know the answer so am making a similar request myself.

In 2013 the BBC strengthened its governance requiring approval from the BBC's Senior Manager Remuneration Committee for:

- any proposed compromise agreements where the total of all redundancy / severance payments is over £75,000;*
- any proposed compromise agreement where there is an exceptional payment regardless of the amount; and*
- the BBC committed to cap severance payments to £150,000 from September 2013 onwards.*

This applies to all BBC employees regardless of grade. Compromise agreements where individuals receive a total severance/redundancy payment that is less than £75,000 and is in line with the BBC redundancy pay policy, are approved at divisional levels.

Since this governance mechanism was introduced in September 2013 to date (19 April 2015)

- Who has sat/sits on the Senior Manager Remuneration Committee;*
- How many compromise/settlement agreements have been submitted to the Senior Manager Remuneration Committee;*
- How many applications have been accepted in the first instance;*
- How many applications have been accepted following revision to the initial submission;*
- How many applications have been refused;*
- What has been the outcome of any applications which have not been accepted, accepted following revision, refused;*
- How many payouts have exceeded the £150,000 cap;*
- How many payouts of less than £75,000 were referred as "exceptional payment",*

- What were the justifications for any "exceptional payments" made outside the BBC's redundancy pay policy,
- What have been the highest and lowest payouts;
- What is the total sum that has been paid out in compromise agreements.

Mr Pickard says in his internal review that a response was already being prepared so the BBC should get back to me within 20 days or provide an answer to the original request. You have already had plenty of time.

I have had the same assurances from Mr Pickard but have not received responses. I hope he is not being led up the garden path and that the BBC does plan to answer.

The request made reference to RFI20142105, a request which had also been made via the 'What Do They Know' website¹, and although the requester suggested that his request was "similar" to RFI20142105, the request is in fact virtually identical to that request save for as shown on the marked up text below, and there is no significant difference between the requests:

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- How many applications have been accepted in the first instance;
- How many applications have been accepted following revision to the initial submission;
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- What has been the outcome of any applications which have not been accepted, accepted following revision, refused;
- How many pay outs have exceeded the £150,000 cap;
- How many pay outs of less than £75,000 were ~~referred on the basis of being an~~ as "exceptional payment",

¹ https://www.whatdotheyknow.com/request/bbc_compromise_agreement#incoming-633761

- What were the ~~reasons~~ justifications for any "exceptional payments" made which were outside the BBC's redundancy pay policy,
- What have been the highest and lowest payouts;
- What is the total sum that has been paid out in compromise agreements.

The BBC's Information Policy and Compliance team responded to the request which is the subject of this review on 01 May 2015 and declined to provide a substantive response to the request, stating that:

"Under section 14(1) of the Act, public authorities are not obliged to comply with a request for information if the request is vexatious. The Information Commissioner's guidance with respect to vexatious requests states that 'determining whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation'.

The BBC is of the view that the following questions, which the ICO recommends an organisation considers, are of particular relevance to your request;

- *Is the request harassing the authority or causing distress and irritation to staff?*
- *Does the request create an unjustified level of disruption?*
- *Is the request disproportionate?*

This request could fairly be characterised in terms of the Information Commissioner's guidance on the matter as 'harassing the authority' and is 'designed to cause disruption or annoyance'. Based on these factors, where the information requested is covered by the Act, we are of the view that the BBC is not obliged to comply with this request.

You may be interested in the ICO guidance regarding 'vexatious requests', which is available at the following link;

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Issues on review

The requester sought an internal review of the BBC's application of the exemption under s14(1) by email of 07 May 2015 at 18:45:

"My request is perfectly valid and your response is hostile and accusatory.

Someone else has made a similar request. That request is publicly available on the Whatdotheyknow website and I followed its progress with interest. I have noted Mr Pickard's assurances but I also note that those seem to do little to encourage the BBC to respond in a timely manner to requests.

I refute your characterisation of my request as vexatious, intent on 'harassing the authority' and 'designed to cause disruption or annoyance'. My request is intent on obtaining information from the BBC which it seems intent on keeping secret. It is also my right under the law to make this request.

The BBC set great store in its new governance mechanism preventing a recurrence of the widely publicised abuses of the recent past. I am asking as a licence fee payer for information demonstrating that has happened in practice.

I am requesting an internal review of the BBC's handling of my request to date and the tone of the response. I repeat my initial request for information and I remind you that exercising my right under the Act is not vexatious.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.whatdotheyknow.com/request/bbc_compromise_agreements

Decision

I have considered the terms of the original request, the BBC's response to the request and the points raised by the requester when seeking the internal review.

I have also reviewed the Information Commissioner's ("IC") guidance on dealing with vexatious requests (dated 02 November 2014)² and the Tribunal and Court of Appeal decisions in Dransfield and other relevant jurisprudence.

Having regard to all the circumstances, I uphold the decision to rely on s14(1). My reasoning is set out below.

The IC's guidance recognises that s14(1) is not something which "*is only to be applied in the most extreme of circumstances*" and notes that public authorities are "*free to refuse a request as vexatious based on their own assessment of all the relevant circumstances*". While, as the Court of Appeal recognised in Dransfield v Information Commissioner [2015] EWCA Civ 454³, the ability to make requests under FOIA is "*an important statutory right*", requests may nevertheless be properly deemed vexatious - as the request in that case was. The Information Commissioner's guidance explicitly states, at para.50, that "*the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible*". This was upheld in the Upper Tribunal's decision in Dransfield v Information Commissioner [2012] UKUT 440 (AAC)⁴, in which it was stated, at para.34, that "... *the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request*", but nevertheless identified, at para.28, that in determining whether a request is vexatious "*It may be helpful to consider...four broad issues or themes - (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff)*". These, non-exhaustive, indicators were not challenged on appeal.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

³ <http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

⁴ <http://www.bailii.org/uk/cases/UKUT/AAC/2013/440.html>

In this instance, the requester is seeking information in the same terms as a request which he knows to be outstanding and which he states he has been following the progress of. The BBC receives a large number of requests under the Act each year (2,098 in 2014/15). The BBC endeavours to respond to every request promptly, and has been working hard to increase the number of requests responded to within the statutory time for compliance. For example, in 2014/15 the BBC increased the number of requests responded to within the time for compliance to 92%. Unfortunately, on occasion it is not possible to respond to a request within the time for compliance but the BBC will still take steps to comply as soon as possible. By making a repeat request for the exact same information, when the requester knows that the BBC is already dealing with the request and that since the original request was submitted via 'What Do They Know' the BBC's response to the request will be made publicly available and will therefore be accessible to the requester, his request only has the effect of increasing the workload of the relevant teams with no tangible public interest benefit. Indeed, the additional workload is exemplified by the need to not only respond to the repeat request but to conduct the internal review sought by the requester.

This is set against a backdrop of the requester having submitted 13 requests for information, 5 internal reviews and 5 IC cases to date this year. These requests have related to issues as diverse as: the number of meeting rooms at Broadcasting House; information regarding expenses claimed by those in receipt of car allowances; the number of staff employed at particular grades; information regarding the amounts paid to those on special personal salaries and how these compare with the salaries for staff at the notional equivalent grade; the amount spent on internal hospitality by particular directorates; staff sickness absences by division and, in a separate request, at certain grades; the number of compromise agreements entered into; the spend on external meeting rooms in a particular postcode; and, the number of breakfasts provided following the Andrew Marr Show. These impose a significant burden on the BBC. That is not to suggest that the BBC considers the requester vexatious. However, even taking only the 60 day period prior to this review, which includes the date on which the request complained of was made, the requester has submitted 11 requests for information which the BBC is entitled to aggregate in assessing the cost of compliance (in accordance with s12(4) FOIA and The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004), and this is relevant to the BBC's application of s14(1).

Furthermore, it is to be anticipated that the requester may make further similar repeat requests in future, and that the present and future burden on the BBC in handling such requests would be substantial. Indeed, the requester has submitted further repeat requests: repeat request RFI20150639 relating to RFI20142102 and repeat request RFI20150636 relating to RFI20141627. Having regard to this pattern, the motive of the requester appears to be to increase the burden on the BBC.

Balancing the objective value of the repeat request which is the subject of this review against the detrimental impact on the BBC, I consider that the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress, and was thereby manifestly unreasonable.

I do not consider that the BBC's response to the request was either "hostile" or "accusatory" as suggested by the requester, and nor do I consider that there was



anything inappropriate about its tone. The BBC has not suggested that the requester is vexatious, but rather that the specific request relevant to this review was vexatious in the circumstances. It is not in dispute that the requester's correspondence has been in reasonable terms to 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 545 745 or www.ico.gov.uk