

Freedom of Information

Internal Review decision

Internal Reviewer	Lawyer – BBC Workplace and Information Rights
Reference	RFI20181583/IR2018076
Date	09 October 2018

Requested information

On 15 August 2018 Mr John Gittos made a request for information under the Freedom of Information Act 2000 (“**the FOIA**”) for the following information through the website whatdotheyknow:

“On the 21/10/2017 the Director of Editorial Policy and Standards, David Jordan attended a conference and according to data his flight cost the licence payer the equivalent of 19 tv licences = £2631.57 this was the cost of a first class flight why given licence payers are told BBC only purchase the cheapest flights possible then obviously that criteria wasnt used here . We also have evidence Jordan attended no meeting s on his first day why this mode of travel.”

On 13 September 2018, the BBC responded with the following:

“Please be advised that the Act gives a general right of access to all types of recorded information held by public authorities. Your request is not a request for recorded information, and we are not required to create new information to respond to a request, or give a judgement or opinion that is not already recorded.

However, we would like to note that the flights were not first class tickets and were booked in accordance with BBC policy.

You may find the following link of assistance, which details how to make a valid request under the Act: <https://ico.org.uk/for-the-public/official-information/>

On 14 September 2018 you requested an internal review of the BBC’s decision:

“I am writing to request an internal review of British Broadcasting Corporation's handling of my FOI request 'First class travel'.

[GIVE DETAILS ABOUT YOUR COMPLAINT HERE] I have read your reply and it is stated that this was not a first class ticket , but given the amount of money involved £2631.57 it certainly was not an economy seat because I have gone through various airline websites and to no stretch of the

imagination was this in economy .So I will now ask the same question by stating was this a business class seat and if it was my question is still why . I did notice in the reply I got I was told it was not a first class ticket , but strangely not what category it was perhaps the writer thought I would obviously think then it was economy ticket and accept their reply .I feel quite angry that the BBC who on one hand talks endlessly about transparency tries every way possible not to live up to the rhetoric , certainly here the writer thought they were being clever by pointing out it wasnt first class but not informing me what it actually was and by doing that there is an element of deceit .I also find it strange why its taken so long to reply to my FOI when actually its told me nothing.”

Issue for review

This review considers whether the BBC acted consistently with its duties under the FOI Act in responding to your request for information.

Decision

On review of your initial request for information, the precise nature of your request is not clear. This is because you have not posed a question in your request. In the BBC’s initial response, the BBC provided you with the opportunity to make a ‘valid’ request for information as understood by section 8(1)(c) in that the request ‘describes the information requested’. The response also furnished you with some information about a flight that was expensed by the BBC’s Director of Editorial Policy and Standards, Mr David Jordan. Specifically the response explained that this was not a first-class airfare and was expenses in a manner consistent with the BBC’s Expenses Policy.

From your internal review request, I can assume that you wish the BBC to clarify whether Mr Jordan’s flight was a business-class flight. Beyond the information already provided to you in the BBC’s initial response, the requested information falls outside the scope of the FOIA as it is held for the ‘special purposes’ of journalism, art and literature.

The test to be applied

Part VI of Schedule 1 of FOIA provides that information held by the BBC and other public service broadcasters is only covered by the FOIA if it is held for ‘purposes other than those of journalism, art or literature’.¹

One of the main policy drivers behind the limited application of the FOIA to public sector broadcasters was to protect freedom of expression and the rights of the media under Article 10 of the European Convention of Human Rights. Article 10 states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

¹ Schedule 1, Freedom of Information Act 2000.

The BBC's core purpose is that of public service broadcasting; a key function within this is the duty to impart information and ideas on all matters of public interest and to provide services which inform, educate and entertain. Maintaining our editorial independence is a crucial factor in enabling the BBC to fulfil this function.

The ICO recognised the importance of Schedule 1 of the FOIA in protecting the independence of the media, stating that:

"It is the Commissioner's view that the ultimate purpose of the derogation 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. This position is consistent with the Human Rights Act 1998, as it could be argued that the invasion of this space is a restriction on the programme maker's ability to exercise free speech".²

In determining whether the disputed information is held for the purposes of journalism, art or literature, the appropriate test is whether there is 'any sufficiently direct link between the BBC's holding of the information and the achievement of its journalistic purposes'³ having regard to the 'the proximity between the subject-matter of the request and the BBC's journalistic activities and end-product'.⁴

The legislative objective of the exclusion, as emphasised by Lord Walker at §78 in *Sugar v BBC*:

"... public service broadcasters, no less than the commercial media, should be free to gather, edit and publish news and comment on current affairs without the inhibition of an obligation to make public disclosure of or about their work in progress. They should also be free of inhibition in monitoring and reviewing their output in order to maintain standards and rectify lapses."⁵

The tripartite analysis of the Information Tribunal, as it then was, about the meaning of 'journalistic activity' at §§107-109 of its decision in *Sugar* was endorsed by all three appellate courts:

"The first is the collecting or gathering, writing and verifying of materials for publication.

The second is editorial. This involves the exercise of judgement on issues such as the selection, prioritisation and timing of matters for broadcast or publication; the analysis of, and review of individual programmes; the provision of context and background to such programmes.

The third element is the maintenance and enhancement of the standards and quality of journalism (particularly with respect to accuracy, balance and completeness). This may involve the training and

² *Sugar v The Information Commissioner* (EA/2005/0032), access at: <http://www.informationtribunal.gov.uk/DBFiles/Decision/i186/sugar%20derogation.pdf>

³ *Sugar v BBC* [2012] 1 WLR 439, per Lord Brown, at 469 (§106).

⁴ *Ibid*, per Lord Walker, at 464 (§83).

⁵ *Ibid*, per Lord Walker, at 462 (§78).

development of individual journalists, the mentoring of less experienced journalists by more experienced colleagues, professional supervision and guidance, and reviews of the standards and quality of particular areas of programme making.”⁶

In relation to specific information about a person’s expenses including whether flights booked by a senior manager at the BBC were business-class flights relate to the second limb of *Sugar* as such requests relate to budgetary considerations that impact on editorial decisions about how money is spent for programming.

The ICO has upheld similar decisions in relation to requests for expenses, for instance, FS50694101:

<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014838/fs50694101.pdf> and FS50672644:

<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2013870/fs50672644.pdf>

As previously explained to you by the BBC, the BBC publishes a significant amount of information on expenses and remuneration on our website as part of our publication scheme and in the BBC’s Annual Account and Report. For instance, see the BBC’s Salary and Expenses:

<https://www.bbc.co.uk/aboutthebbc/insidethebbc/managementstructure/biographies> For more information about the BBC’s Expenses Policy you can read here:

http://downloads.bbc.co.uk/foi/classes/policies_procedures/bbc_expenses_policy.pdf For your information, the BBC has been publishing the salaries and expenses of senior managers since autumn 2009.

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

⁶ *Sugar v The Information Commissioner* (EA/2005/0032), access at: <http://www.informationtribunal.gov.uk/DBFiles/Decision/i186/sugar%20derogation.pdf>