



Information Rights

bbc.co.uk/foi bbc.co.uk/privacy

Ro Cochran

request-803556-c281e1a4@whatdotheyknow.com

6 April 2022

Dear Ro Cochran,

Freedom of Information request – RFI20211635

We are sorry for the delay in processing your request to the BBC of 1 November 2021 seeking the following information under the Freedom of Information Act 2000 ('the Act'):

'I am submitting a request under the FOI Act, in relation to your work with the charity Stonewall.

I would be most grateful if you could please release the information as follows:

- Your most recent application to Stonewall's Workplace Equality Index;*
- Any feedback given to you from Stonewall following the evaluation of your most recent WEI application.*

I apologise for the length of this email. However, I wish to set out fully why I feel that this information is in the public interest and should be released.

Furthermore, while I am sure you know that the identity and, or, the motive of the applicant is irrelevant under FOI, it still feels necessary to state that my motivation for requesting the release of this information has nothing to do with any particular policy debate.

This FOI is fundamentally about the general principle of transparency by public bodies and questions which have been raised about the BBC's editorial independence.

I know this is not the first request you have had for this information. But I feel the situation has moved on since you last responded to an FOI on this topic.

The last FOI response you gave that I could see (April 2021) noted one factor in favour of disclosure: "that there is a public interest in understanding the BBC's progress concerning LGBTQ+ inclusivity."

You then used the commercial exemption. As you will also know, the commercial test is very much context-dependent. Over time, the balance between the public interest and any given commercial interest may shift.

Last time, you noted one factor in favour of disclosure (as above). I would add that in my view there are more general arguments in favour of disclosure in the public interest by the BBC about your work with Stonewall. They could be said to include a public interest in:

- transparency;*
- accountability;*
- promoting public understanding;*
- safeguarding confidence in the BBC's impartiality;*
- good decision making by public bodies;*
- upholding standards of integrity;*
- ensuring justice and fair treatment;*
- securing the best use of public resources;*
- responding to plausible accusations of wrongdoing;*
- correcting information in the public domain, if it is wrong.*

I also think it would be in the BBC's commercial interests to respond due to:

- Public interest in the issue*
- Presenting a 'full picture'*
- Questions about a plausible suspicion of wrongdoing (in the most general sense, as per the Nolan podcasts).*

In April you argued that the public interest in maintaining the exemption outweighs the public interest in disclosing. But, in light of the Nolan podcast series, there is further public interest in full transparency, particularly about the BBC's editorial independence.

In April you claimed publication would damage the BBC's commercial interests. I would argue disclosure would be in the BBC's commercial interests, because responding to this FOI request in full may indicate whether or not there is any substance in an allegation of wrongdoing. These allegations were made in a BBC podcast. As ICO note, the content of the information is important in making this assessment.

It may refute the suspicion, in which case there may be some public interest in disclosing the information in order to clear up misconceptions; or, it may indicate that the suspicion is justified (a so-called 'smoking gun').

In which case, there is an even stronger public interest in disclosure.

As ICO say, even if wrongdoing is not an issue, there is a public interest in fully understanding the reasons for public authorities' decisions, to remove any suspicion of manipulating the facts, or 'spin'.

If information that is already in the public domain (rather than the requested information) is misleading or misrepresents the true position, or does not reveal the full picture, this may increase the public interest in disclosure.

Information has been partly disclosed, so it could be leading to misrepresentation or a misleading picture being presented to the public.

For example - I note that the BBC has declined to comment on membership of Stonewall's schemes. A spokesperson said: "We are not a member of Stonewall, we do not take legal advice from Stonewall and we do not subscribe to Stonewall's campaigning. The charity simply provides advice that we are able to consider. As a broadcaster, we have our own values and editorial standards."

Perhaps releasing the documents requested, as all the devolved administrations and countless other public bodies have done, could present the 'full picture', and clearly refute any allegations of editorial bias?

In April, the BBC also stated that "the public interest is not served by public bodies being less willing to engage in programmes which help them improve LGBTQ+ inclusivity, a likely consequence of the BBC disclosing the information requested."

However, it seems odd to draw a correlation between these two outcomes. Obviously, I have no idea what is in the documents, hence this request. But it seems hard to believe that releasing this information would be so damaging as to make public bodies "less willing to engage in programmes which help them improve LGBTQ+ equality" when they already have a legal obligation to do so under the Public Sector Equality Duty.

On commercial interests, as you know, it is not sufficient for you to simply argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. You must be able to demonstrate a causal relationship between the disclosure of the information in question and the prejudice you envisage.

Over the course of 2020-21, many public bodies have released their full WEI applications and full feedback given by Stonewall. Organisations including: the University of Edinburgh, the Scottish Government, the Welsh Government, and the IOPC, to name just a few.

Press interest in these releases was high and widely reported, often in a very negative light. Indeed, Stonewall has stated that "The weekend of 22/23 May [2021] saw a coordinated attack on our Diversity Champions programme launched across some parts of the media."

But they continued: "the Diversity Champions programme now counts more than 900 leading employers as members... The number of organisations who are part of the programme has grown by 30 in total in the year to 1 June 2021." (<https://www.stonewall.org.uk/about-us/news/stonewall-statement-diversity-champions-programme>).

I would argue that this clearly demonstrates that transparency by public bodies has not impacted on Stonewall's commercial interests, or organisation's willingness to work with them on LGBTQ+ inclusion.

It is great news that Stonewall's membership has grown. It is also great news that many public bodies were transparent and accountable about their work, spending and decision making processes.

So I would contend that there is not a causal relationship between transparency by public bodies, like the BBC, and fewer organisations wishing to support LGBTQ+ rights. Both are clearly outcomes in the public interest, and one does not appear to have affected the other.

You also noted in April that "We also consider that disclosure of some of the requested information would be contrary to legitimate expectations of confidentiality." However, as the ICO website notes, public authorities cannot contract out of their statutory obligations under FOIA, and suppliers of good or services should be aware of this.

BBC response

In accordance with section 1(1) of the Act, we confirm that at the date of your request for information, the BBC holds information relevant to your request. The BBC holds a copy of its last submission to Stonewall's Workplace Index.

Due to the size of the file, we send the document via Dropbox. Please email us foi@bbc.co.uk if you have any issues accessing the file.

Please note that some of the BBC policies submitted with the application have since been updated and are available online via the BBC's Publication Scheme.

Please note that we have redacted some information in the submission for two reasons.

First, we have redacted the personal data of BBC staff who would not reasonably expect to be identified in the submission. We made these redactions under section 40(2) of the FOI Act. Under section 40(2), personal information about identifiable living individuals is exempt if disclosure to a third party would breach one or more principles in the General Data Protection Regulation. The individual(s) concerned would not expect their personal data to be disclosed to a third party. Therefore, disclosure would breach the principle to only process personal data lawfully, fairly and in a transparent manner.

Second, we have redacted third party training material on the basis that the intellectual property in that training belongs to the third party, not to the BBC. We make these redactions under section 43(2) of the FOI Act. It would be prejudicial to the third party's interests as well as the BBC's to disclose material in which they hold rights as it infringe those rights and would likely undermine the BBC's capacity to engage with this and similar companies in the future,

As section 43 is a qualified exemption, the BBC is required by section 2(2) of the Act to consider the public interest factors both for and against disclosing information in relation to this request. Specifically, we looked at whether in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Factors in favour of disclosing this information:

- that there is transparency in the accountability of the BBC for public funds; and
- that the BBC is using public money effectively, and that the BBC is getting value for money when purchasing goods and services.

Factors for withholding disclosure of this information:

- It may damage the BBC's (and/or a third party's) business reputation or the confidence that customers, suppliers or investors may have in it; and
- May harm the ability of the BBC or a third party to obtain goods and services in the future.

We are 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.

Appeal Rights

If you are not satisfied that we have complied with the Act in responding to your request, you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address above, explaining what you would like us to review and including your reference number. A request for an internal review must be made within 40 working days of receiving the BBC's response to your original request.

If you are not satisfied with the 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, Tel: 0303 123 1113 or see <https://ico.org.uk/>.

Yours sincerely,

Information Rights

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