



Information Policy & Compliance
bbc.co.uk/foi bbc.co.uk/privacy

K Dudakia

By email: request-215895-clcbb61@whatdotheyknow.com

19th June 2014

Dear K Dudakia,

Freedom of Information request – RFI20140911 – Newsnight

Thank you for your request to the BBC of 01/01/2014, under the Freedom of Information Act 2000 seeking the following information:

Newsnight: 16th May 2014

- a. How many complaints have you had with regard to the Newsnight programme of 16th may 2014 in which there was a segment on PM Modi? Can I have a list?*
- b. How many of these complaints are from politicians and who?*
- c. Has the BBC conducted any type of internal investigation/review into the issue/s raised? If so can I have copies of the reports/reviews conducted.*

The information you have requested is excluded from the Act because it is held for the purposes of 'journalism, art or literature.' The BBC is therefore not obliged to provide this information to you and will not be doing so on this occasion. Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for 'purposes *other* than those of journalism, art or literature'. The BBC is not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities¹, including information relating to the subject of editorial complaints. The BBC's independence and impartiality would be at risk through disclosure of information on editorial complaints, which is discussed in detail below.

¹ For more information about how the Act applies to the BBC please see the enclosure which follows this letter. Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.

The BBC has chosen not to volunteer information relating to the subject of editorial complaints for several very good reasons, chief amongst them being a desire to maintain our independence and impartiality. In this particular case, the BBC is concerned to preserve the integrity of the independent review process for editorial complaints.

You may not be aware that one of the main policy drivers behind the limited application of the Act to public service broadcasters was to protect freedom of expression and the rights of the media under Article 10 European Convention on Human Rights ("ECHR"). The BBC, as a media organisation, is under a duty to impart information and ideas on all matters of public interest and the importance of this function has been recognised by the European Court of Human Rights. Maintaining our editorial independence is a crucial factor in enabling the media to fulfil this function.

The Information Commissioner's Office has recognised the importance of Schedule 1 of the Act in protecting the independence of the media, stating that:

"It is the Commissioner's view that the ultimate purpose of the derogation (Schedule 1) 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."

The BBC agrees that we have the right to protect our journalistic and editorial independence by maintaining just such a private space in which to produce our content. This extends to the sifting and review of praise and criticism from audiences, as well as the seeking of an independent view of criticism in order to undertake this review process. This is an important part of the BBC's process of creating and improving programmes. Despite the BBC's obligation to be independent and impartial, many bodies, groups and individuals attempt to influence our output. This pressure takes many forms and has to be resisted by programme makers across the BBC.

If the content of individual criticisms were available for public scrutiny on a regular basis then programme makers would be under even greater pressure to respond to lobbies or vocal individuals than they are already. They might be reluctant to make changes that reflect the views in the complaints in that they could be accused of "caving in to pressure" and other viewers would make judgements about the apparent impartiality of the programme. Conversely, if their judgement was to ignore the complaints, as they believed them to be invalid or outweighed by other factors, they will be accused of ignoring public opinion, without the opportunity to explain the reasons for their editorial judgement. The BBC also believes that publication could lead to a tit-for-tat escalation of complaints, particularly from lobbying groups or political parties, as opponents competed with each other in terms of volume and strength of a complaint to the BBC.

I hope that this provides you with some understanding of why this is an important concern for the BBC.

It may also be helpful to explain that there are three stages in the BBC's complaints process. You can find out more about these at this website: <http://www.bbc.co.uk/complaints/homepage/>. The

first stage of complaints is dealt with by the BBC's main correspondence team, BBC Audience Services. If a complainant is unhappy with the response received from BBC Audience Services and feels that the BBC has breached its editorial standards, he or she may appeal to the Editorial Complaints Unit. If the complaint is unhappy with the decision from the Editorial Complaints Unit, he or she may then appeal to the Editorial Standards Committee.

In addition, I can advise, outside the scope of the Act that the BBC proactively publishes public responses to recent issues of audience concern which have caused a significant number of complaints, or to any significant issue raised by complaints received. The BBC also publishes quarterly archived reports covering the main themes in all complaints received. In addition, information about second-stage complaints, i.e. those considered by the Editorial Complaints Unit, is published at the following site: <http://www.bbc.co.uk/complaints/reports.shtml>. Information about the third stage of the complaints process, i.e. those considered by the ESC, is published at the following site: http://www.bbc.co.uk/bbctrust/appeals/editorial_appeal_findings.html

Finally, the BBC makes a huge range of information available about our programmes and content on bbc.co.uk. We also proactively publish information covered by the Act on our publication scheme.

Appeal Rights

The BBC does not offer an internal review when the information requested is not covered by the Act. If you disagree with our decision you can appeal to the Information Commissioner. Contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF telephone 01625 545 700. www.ico.org.uk

Please note that should the Information Commissioner's Office decide that the Act does cover this information, exemptions under the Act might then apply.

Yours sincerely,

Sue Gray
Head of Central Audiences

Freedom of Information

From January 2005 the Freedom of Information (FOI) Act 2000 gives a general right of access to all types of recorded information held by public authorities. The Act also sets out exemptions from that right and places a number of obligations on public authorities. The term “public authority” is defined in the Act; it includes all public bodies and government departments in the UK. The BBC, Channel 4, S4C and MG Alba are the only broadcasting organisations covered by the Act.

Application to the BBC

The BBC has a long tradition of making information available and accessible. It seeks to be open and accountable and already provides the public with a great deal of information about its activities. BBC Audience Services operates 24 hours a day, seven days a week handling telephone and written comments and queries, and the BBC’s website bbc.co.uk provides an extensive online information resource.

It is important to bear this in mind when considering the Freedom of Information Act and how it applies to the BBC. The Act does not apply to the BBC in the way it does to most public authorities in one significant respect. It recognises the different position of the BBC (as well as Channel 4 and S4C) by saying that it covers information “held for purposes other than those of journalism, art or literature”. This means the Act does not apply to information held for the purposes of creating the BBC’s output (TV, radio, online etc), or information that supports and is closely associated with these creative activities.

A great deal of information within this category is currently available from the BBC and will continue to be so. If this is the type of information you are looking for, you can check whether it is available on the BBC’s website bbc.co.uk or contact BBC Audience Services.

The Act does apply to all of the other information we hold about the management and running of the BBC.

The BBC

The BBC’s aim is to enrich people’s lives with great programmes and services that inform, educate and entertain. It broadcasts radio and television programmes on analogue and digital services in the UK. It delivers interactive services across the web, television and mobile devices. The BBC’s online service is one of Europe’s most widely visited content sites. Around the world, international multimedia broadcaster BBC World Service delivers a wide range of language and regional services on radio, TV, online and via wireless handheld devices, together with BBC World News, the commercially-funded international news and information television channel.

The BBC’s remit as a public service broadcaster is defined in the BBC Charter and Agreement. It is the responsibility of the BBC Trust (the sovereign body within the BBC) to ensure that the organisation delivers against this remit by setting key objectives, approving strategy and policy, and monitoring and assessing performance. The Trustees also safeguard the BBC’s independence and ensure the Corporation is accountable to its audiences and to Parliament.

Day-to-day operations are run by the Director-General and his senior management team, the Executive Board. All BBC output in the UK is funded by an annual Licence Fee. This is determined and regularly reviewed by Parliament. Each year, the BBC publishes an Annual Report & Accounts, and reports to Parliament on how it has delivered against its public service remit.