



**Freedom of Information
Internal Review Decision**

Internal Reviewer	Lawyer – Legal Workplace and Information Rights
Reference	RFI20211490 / IR2021080
Date	06 January 2022

Requested information

First, we apologise for the delay in processing this internal review.

On 30 September 2021, you requested that the BBC provide the following information under the Freedom of Information Act 2000 ('the Act'):

Have any staff working on Newsnight been asked by "management" to delete previously published tweets; if so why; and what if any sanctions were taken if the original tweets were deemed to run contrary to the BBCs guidance on social media.

On 26 October 2021, the BBC responded with the following:

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 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (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.

This is because we don't hold a central record of instances where staff have been reminded of the guidelines. If held, this information would be held at a local level and with individual managers. 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. However, due to the nature of your request and the records not being held in a readily accessible and extractable format, we are unable to suggest a way in which to refine your request in order to obtain the information you are interested in within the cost limit.

As set out in section 6(1)(b)(ii) of the Act, our subsidiaries (including BBC Studioworks Limited, UKTV, BBC Global News Ltd and BBC Studios Ltd), as well as the charities BBC Media Action and BBC Children in Need, are not subject to the Act. As such, information relating to these entities is not considered in the above response.

On 26 October 2021, you requested an internal review of the BBC's decision. In particular, you said that:

I am writing to request an internal review of British Broadcasting Corporation's handling of my FOI request 'Newsnight social media'.

I think this information could be ascertained within the time frame and financial constraints of an FOI.

The issues for review

This internal review will consider whether the BBC was correct in engaging section 12 of the FOI Act in regard to your Request for Information and, if so, whether the BBC acted consistently with its duty under section 16 of the FOI Act to provide advice and assistance to you.

Decision

I consider that the BBC was incorrect in finding that complying with the first aspect of your request would exceed the appropriate time limit set out in section 12 of the FOI Act. I will not therefore address section 16.

On receipt of your request for internal review, I liaised with representatives in News who are in contact with the BBC Newsnight team. From these discussions I confirm if held, the information you requested is held for the purposes of 'art, journalism or literature'. The Act provides that the BBC is not obliged to disclose this type of information and we will not be disclosing the information on this occasion.

Reasoning

While the BBC does not hold central records of decisions to request BBC workers remove tweets that are determined to amount to breaches of the BBC's Social Media guidance, I note that your request was caveated in two ways that mean the time limit exemption would not apply. First, your request references decisions taken subject to the BBC's Social Media Guidance which was published in 2020. Second, your request is limited to a specific programme team in BBC News and Current Affairs team.

As explained above however, if held, the information is journalistic in nature as it goes to decisions taken about editorial standards.

Part VI of Schedule 1 to the Act 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'. In *Sugar v BBC* [2012]¹, the Supreme Court explained that "journalism" primarily means the BBC's "output on news and current affairs", including sport, and that "journalism, art or literature" covers the whole of the BBC's output to the public (Lord Walker at paragraph 70). This might include information about how BBC journalists gather information for programme-making as well as information about the costs of producing such programming.

In this case, the information that you have requested would be held by senior editorial figures in BBC News for the purposes of reviewing the standards and quality of BBC journalism. The social media posts of BBC journalists are considered to fall within the scope of the term 'journalism' as evidenced by the existence of social media guidance that oversees adherence of such BBC social media with editorial standards. In this way, this information is held by the BBC for purposes that are directly linked to journalism.

¹ *Sugar v BBC* [2012] 1 WLR 439.

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 activities². This is an important way that the BBC and other public service broadcasters can preserve their independence by ensuring information about matters including editorial decisions about programming and budgets allocated to such programming, are not subject to undue public scrutiny. It is important that the BBC is an independent and impartial news organisation.

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. However, the BBC makes a huge range of information available about our programmes and content on bbc.co.uk.

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/>

² 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.