



Response to Open Data Consultation

The Radio Independents Group (RIG), representing around 90 independent radio production companies in the UK, welcomes this opportunity to participate in this Consultation.

RIG's member companies make radio and audio content for a range of suppliers, including the BBC, commercial radio companies and other private corporate organisations, in addition to audioguides for museums, audiobooks and so on.

In terms of the BBC specifically, radio 'indies' make programmes across all BBC Analogue and digital networks. For example 'Benji B' (Radio 1) 'Pick Of The Pops' (Radio 2) Private Passions (Radio 3) Gardener's Question Time (Radio 4) Fighting Talk (Five Live) and a host of other strands supplemented by projects ranging from major events to short series to one-offs.

Our response to this consultation is therefore primarily based on our experience with the BBC, which we believe takes an over-restrictive approach to the Freedom of Information Act (FoIA) and indeed could go much further than that Act by whole-heartedly embracing the Government's 'Open Data' agenda.

In response to the 'Policy Challenge Questions' our position is as follows:

1. An enhanced right to data

Section 3 of the Act describes the meaning of "public authority" and Schedule 1 lists those authorities. The entry in relation to the BBC at Schedule 1, Part VI reads: "The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature".

Thus FoIA does NOT currently apply to any information the BBC holds for the purposes of "journalism, art of literature".

This is a very important provision, which in principle RIG supports. It is vital that information gathered by the BBC for investigative journalism, for example, is protected from premature disclosure to those under investigation. Equally it means that information compiled for, say, the content of arts programmes does not need to be disclosed to rival broadcasters.

However the BBC chose early in the operation of the FOIA to interpret that provision in the most restrictive way possible. Indeed since the BBC's purpose is programme-making, almost any information it holds can be regarded as "held for the purpose of ... journalism, art of literature". We are quite sure that was never the intention of the legislators, but it has in effect caused the BBC's suppliers to be unable to obtain information that would allow them to make an informed judgement on planning the future of their businesses.

the BBC has responded in a highly limited fashion to RIG's request for detailed information on its commissioning programmes from independent producers. The BBC does this on the grounds that such information is exempt, and it has offered only the inadequate summary information published in the BBC Annual Reports

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This interpretation has been challenged in the courts, but the BBC is currently able to rely on a judgement delivered by the High Court on 2 Oct 2009 in a case (Sugar v BBC) that had been running since early 2005

that:

"The BBC has no obligation to disclose information which they hold to any significant extent for the purposes of journalism, art or literature, whether or not the information is also held for other purposes. The words do not mean that the information is disclosable if it is held for purposes distinct from journalism, art or literature, whilst it is also held to any significant extent for those listed purposes. If the information is held for mixed purposes, including to any significant extent the purposes listed in the Schedule or one of them, then the information is not disclosable." [Judge Irwin]

A very useful summary by the BBC's own Martin Rosenbaum is available at:

http://www.bbc.co.uk/blogs/opensecrets/2009/10/high_court_rulings_on_the_bbc.html

Ironically on the same page there is a link that reads "you can read some of the stories the BBC has found using freedom of information here"

(BBC ref RFI20090643) for details of the BBC's commissioning from independent suppliers was turned down on the same grounds, though it is difficult to understand why the information requested was in any substantial way held for the purposes of journalism, art or literature. The information requested was:

BBC radio's programme production for each of the last three years (calendar or financial):

For each UK network (i.e. Radios 1, 2, 3, 4, 5) national network (Radio Wales, Scotland and the Northern Ireland stations) and digital networks (iXtra, 6 Music etc)

- ✧ *The total number of hours broadcast*
- ✧ *The total number of hours of originations*
- ✧ *The total number of hours defined as "eligible" for independent supply*
- ✧ *The total number of hours bought from independent suppliers*
- ✧ *The total overall budget of the network*
- ✧ *The total production budget of the network (i.e. the budget available to in house and independent suppliers, excluding network and other central costs)*
- ✧ *The total spend on programmes bought from independent suppliers*

The BBC responded that *"the information you requested falls outside the scope of the Freedom of Information Act"*.

The Information Commissioner was obliged to turn down RIG's appeal (ICO ref FS50268091) because of the above High Court judgement.

Interestingly we would almost certainly have won that appeal prior to the High Court judgement. See for example a very similar request from 2005 -- ICO ref FS50090393 -- which the ICO directed the BBC to disclose.

This is not just a problem that affects RIG. A request under FOIA [RFI20100549] dated 18/19 April 2010 obliged the BBC to reveal that: "Since the Act was implemented on 1st January 2005 the BBC has received 6112 requests for information under the Act. This represents the number of requests received up until 31st December 2009. The derogation for journalism, art or literature applied to 2940 of those requests. **This means that 48% of the total number of requests received were for information not covered by the Act.**" [our emphasis added]

Recommendation 1: That the FoI Act be amended by changing Schedule 1, Part VI to read: “The British Broadcasting Corporation, in respect of all information held, other than information held primarily and directly for purposes of journalism, art or literature”.

2. Setting transparency standards

The BBC makes a great deal of use of the FoI Act to force other public authorities to disclose information they would prefer not to. It ill behoves the BBC to apply a much more restrictive approach to the information that it holds, particularly since its entire funding comes from the taxpayer.

This we believe reinforces our ‘recommendation 1’.

6. Innovation with Open Data

We believe the BBC should go much further by establishing as a principle that data it collects for the purposes of management and programme production should be made available as raw data (with appropriate redaction of genuinely commercially confidential data fields only) so that interested parties can carry out their own analysis rather than being obliged to rely on summaries alone.

Recommendation 2: that a statutory duty be placed on the BBC to release databases of information, other than those genuinely exempt under a revised Sch 1 Part VI (as above), for third party analysis, with any redactions subject to arbitration by the ICO.

We believe these two recommendations would form part of the answer to the consultation question 1 (p.25) "how would we establish a stronger presumption in favour of publication than that which currently exists", at least as far as the BBC is concerned.